

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7430

United States Court of Appeals

FOR THE SECOND CIRCUIT

RICHARD HUGHES,

Plaintiff-Appellant,

—against—

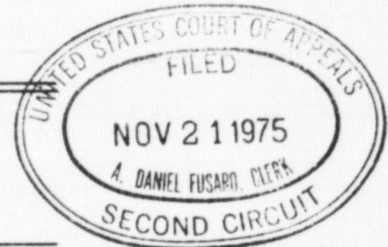
GENERAL MOTORS CORPORATION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

(Volume 1—Pages 1-321)



ARNOLD B. ELKIND

Attorney for Plaintiff-Appellant

122 East 42nd Street

New York, N.Y. 10017

986-4921

SIMPSON THACHER & BARTLETT

Attorneys for Defendant-Appellee

One Battery Park Plaza

New York, N.Y. 10004

483-9000

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

RICHARD HUGHES, :

Plaintiff-Appellant, :

-against- : Docket No. 75-7430

GENERAL MOTORS CORPORATION, :

Defendant-Appellee. :

-----X

RELEVANT DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
<u>1972</u>	
May 2.	Filed complaint. Issued summons.
June 15.	Filed defendant's answer.
<u>1973</u>	
Feb. 20.	Filed interrogatories.
Apr. 24.	Filed plaintiff's answers to defendant's interrogatories.
July 3.	Filed plaintiff's notice to take deposition of defendant.
July 17.	Filed plaintiff's interrogatories.
Nov. 23.	Filed defendant's answers to plaintiff's interrogatories.
<u>1974</u>	
Jan. 10.	Filed plaintiff's affidavit and notice of motion for an order extending plaintiff's time to complete discovery, etc. Returnable on: Jan. 18, 1974.

RELEVANT DOCKET ENTRIESDATEPROCEEDINGS1974

- Jan. 18. Filed affidavit and notice of motion by defendant (cross-motion) for an order directing that the deposition of defendant be closed, awarding a reasonable expense incurred, opposing plaintiff's motion, etc. Returnable 1-21-74.
- Jan. 24. Filed plaintiff's affidavit in opposition to cross-motion.
- Feb. 1. Filed ENDORSEMENT that the plaintiff's motion for sanctions under Rule 37 is unopposed. The motion is denied without prejudice to plaintiff's right to renew it if the defendant does not produce, within 15 days from date of entry of this order, for examination "a person or persons familiar with the design, development, production and manufacture of the fuel and ignition systems and gasoline tank assembly" in a 1966 GM truck as described in plaintiff's notice to take defendant's deposition dated July 2, 1973. So ordered. - Carter, J.
- Feb. 7. Filed Memo endorsed on defendant's cross-motion to close deposition of defendant and to award a reasonable expense incurred. Motion is denied. So ordered. - Carter, Jr.
- Feb. 13. Filed defendant's second set of interrogatories.
- Mar. 4. Filed plaintiff's request for production of documents.
- Mar. 7. Filed plaintiff's answers to defendant's 2nd set of interrogatories.
- Mar. 22. Filed plaintiff's affidavit and notice of motion for an order directing defendant to submit to a continued deposition - returnable 3-29-74.
- June 20. Filed defendant's affidavit of Whitney North Seymour in opposition to plaintiff's motion.
- June 20. Filed plaintiff's reply affidavit of Arnold B. Elkind.

RELEVANT DOCKET ENTRIESDATEPROCEEDINGS1974

- June 20. Filed ENDORSEMENT that plaintiff's motion for production of exhibits and documents is granted except as to Item No. 10 and directing completion of discovery. Defendant's motion to require plaintiff to provide further and more complete answers to defendant's interrogatories is granted. If on receipt of answers herein ordered, defendant regards them as insufficient it may renew its Rule 26 motion. So ordered - Carter, J.
- June 28. Filed notice of entry of endorsement filed on 6-20-74.
- Aug. 8. Filed plaintiff's supplemental answers to defendant's second set of interrogatories.
- Sept. 20. Filed defendant's response to request for production of documents.

1975

- May 9. Filed plaintiff's updated answers to defendant's interrogatories.
- May 9. Filed plaintiff's request to admit.
- May 13. Filed plaintiff's request to admit.
- May 19. July trial begun before Carter, J.
- May 20. Trial continued.
- May 21. Trial continued.
- May 22. Trial continued
- May 23. Trial continued.
- May 27. Trial continued.
- May 28. Trial continued and concluded (7 days) -- Jury verdict for the defendant.

RELEVANT DOCKET ENTRIESDATEPROCEEDINGS1975

June 6. Filed plaintiff's affidavit and notice of motion to set aside verdict. Returnable date to be set.

June 18. Filed defendant General Motors Corp. affidavit of James J. Hagan in opposition to plaintiff's motion for an order setting aside the judgment in favor of General Motors and granting a new trial.

June 20. Filed memo endorsed on plaintiff's motion to set aside verdict: Motion denied. Judgment to be entered in favor of the defendant. So ordered. - Carter, J.

July 15. Filed judgment and order that defendant General Motors Corp. have judgment against plaintiff Richard Hughes dismissing the complaint. - Approved Carter, J.

July 23. Filed plaintiff's notice of appeal to the United States Court of Appeals for the Second Circuit from judgment entered 7-15-75 -- copy to Simpson Thacher & Bartlett, Esqs.

Aug. 12. Filed defendant General Motors request to charge.

Aug. 12. Filed supplemental requests to charge by defendant General Motors.

Aug. 12. Filed plaintiff's requests to charge.

Aug. 12. Filed plaintiff's supplemental requests to charge.

Aug. 12. Filed plaintiff's supplemental requests to charge.

RELEVANT DOCKET ENTRIESDATEPROCEEDINGS1975

Aug. 12.	Filed plaintiff's supplemental requests to charge.
Aug. 12.	Filed plaintiff's Memorandum of Law.
Aug. 12.	Filed special trial memorandum.
Aug. 13.	Filed defendant's response to requests to admit.
Aug. 13.	Filed stipulation designating exhibits to be transmitted to the United States Court of Appeals.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	COMPLAINT
SAME TITLE	: PLAINTIFF DEMANDS
-----X	: TRIAL BY JURY

Plaintiff, by his attorney, ARNOLD B. ELKIND, complains of the defendant and alleges upon information and belief:

FIRST: The jurisdiction of this Court depends on diversity of citizenship. The plaintiff is a citizen and resident of the State of New Jersey. The defendant is a Delaware corporation having a principal place of business in the Southern District of New York. The amount in controversy exceeds the sum of \$10,000.00, exclusive of costs and interest.

SECOND: The defendant is the designer and manufacturer of a truck identified as follows: 1966 Dump truck, Serial No. V4005F 42814E, Model No. V4005, and of replacement parts for the ignition system of said truck.

THIRD: That in August of 1971 the aforesaid truck was owned by the Public Works Department of the Township of Weehawken, New Jersey (N.J. Registration No. MGV 686), and was being used in the business of the Public Works Department of the Township of Weehawken.

FOURTH: That on or about August 13, 1971, a replacement ignition device manufactured by the defendant was

installed in said truck at the Highpoint Garage in Union City, New Jersey.

FIFTH: That on August 14, 1971, the plaintiff was seated in the cab of said truck at a gasoline station on Tonnele Avenue, Jersey City, New Jersey, in connection with his employment by the Public Works Department of the Township of Weehawken, New Jersey.

SIXTH: That suddenly, and without warning, as the ignition of the motor of said truck was energized, the cab of said truck burst into flames, causing the plaintiff to sustain painful and devastating injuries.

SEVENTH: That the cause of said fire and the injuries sustained by the plaintiff was the fault of the defendant, in that the design of said vehicle created a hazard to the plaintiff by virtue of the position of the gasoline tank in close proximity to the seat in the cab of said truck, and in that the replacement ignition device set the vehicle afire.

EIGHTH: That the plaintiff was damaged thereby in the sum of \$1,000,000.00.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of ONE MILLION (\$1,000,000.00) DOLLARS, together with the costs and disbursements of

this action.

s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
Office and P.O. Address
122 East 42nd Street
New York, N.Y. 10017
986 4921

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	ANSWER
SAME TITLE	:	Index No.
	:	72 Civ 1811
-----X		

Defendant General Motors Corporation, by its attorneys, Simpson Thacher & Bartlett, as and for its answer to the complaint herein, alleges:

1. Answering paragraph numbered FIRST of the complaint, denies that it has any knowledge sufficient to form a belief with respect to the allegations concerning the plaintiff's citizenship and resident, and the amount alleged to be in controversy.

2. Denies that it has any knowledge or information sufficient to form a belief with respect to the truth of any of the allegations contained in paragraphs numbered SECOND, THIRD, FOURTH, FIFTH and SIXTH of the complaint.

3. Denies each and every allegation contained in paragraphs SEVENTH and EIGHTH of the complaint.

AS AND FOR A FIRST, SEPARATE
AND TOTAL AFFIRMATIVE DEFENSE

4. That the accident and injuries alleged in the complaint were caused or contributed to, in whole or in part, by the acts, omissions, or assumption of risks, of the plaintiff and/or his co-employees.

AS AND FOR A SECOND, SEPARATE
AND PARTIAL AFFIRMATIVE DEFENSE

5. That the accident and injuries alleged in the complaint were contributed to, in whole or in part, by the acts, omissions or assumption of risks by the plaintiff, his co-employees and his employer.

AS AND FOR A THIRD, SEPARATE
AND PARTIAL AFFIRMATIVE DEFENSE

6. That the above entitled action was commenced more than four years after the date of manufacture of the 1966 truck referred to in the complaint, therefore plaintiff is barred from maintaining any cause of action based on breach of warranty, by the applicable provisions of the Uniform Commercial Code.

WHEREFORE, the defendant General Motors Corporation demands that judgment be entered dismissing each and every cause of action alleged against it in the complaint herein together with the costs and disbursements of this action.

SIMPSON THACHER & BARTLETT

By /s/ Roy L. Reardon
(A Member of the Firm)

Attorneys for Defendant
General Motors Corporation
Office and P.O. Address
One Battery Park Plaza
New York, New York 10004
483-9000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

SAME TITLE

:

INTERROGATORIES

Index No. 72 Civ. 1811

- - - - -x

The defendant General Motors Corporation requests that the plaintiff answer within thirty (30) days, in accordance with the Federal Rules of Civil Procedure, the following interrogatories:

* * *

31. Describe any part of the truck which was in a damaged, non-functioning, or improperly operating condition as of the time of the alleged fire.
32.
 - a) Identify in sufficient detail each item or part of the truck involved which plaintiff claims was defective, unsafe or unfit for use;
 - b) Set forth the manner in which it is claimed said items or parts were defective, unsafe or unfit for use; and
 - c) State the exact nature of any such defect, or unsafe and unfit condition, in said parts.
33. If actual notice of any defective, unsafe or unfit condition is claimed, give the date, time, place, manner, by whom and to whom such notice was given; state whether such notice was in writing or oral; and specify the substance of such notice.

34. If constructive notice of any such defective or unsafe condition is claimed, state the nature of the condition and the length of time the condition existed.

35. Give full particulars of the manner in which plaintiff claims that the design of the truck created hazards.

36. Give full particulars of the manner in which plaintiff claims that the replacement ignition device set the vehicle on fire.

37. Give full particulars of the manner in which plaintiff will claim that General Motors was negligent or at fault in any other respect regarding the happening of the accident alleged.

* * *

74. State the first location or source of the flames which burned the aforesaid truck.

* * *

76. State precisely and with particularity the facts and circumstances upon which you rely to support your contention in paragraph SEVENTH of your complaint that this accident was "the fault of the defendant, in that the design of said vehicle created a hazard to the plaintiff by virtue of the position of the gasoline tank

in close proximity to the seat in the cab of said truck."

77. State

- a) the manner in which the design of the truck was hazardous, and
- b) how the design should have been changed or improved.

* * *

Dated: New York, New York
February 16, 1973

Yours, etc.,

SIMPSON THACHER & BARTLETT
Attorneys for Defendant
General Motors Corporation
Office and P.O. Address
One Battery Park Plaza
New York, New York 10004

TO:

ARNOLD B. ELKIND, ESQ.
Attorney for Plaintiff
Office and P.O. Address
122 East 42nd Street
New York, New York 10017
(212) 986-4921

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X
 SAME TITLE 72 Civ. 1811 (RLC)
 : PLAINTIFF'S ANSWERS
 TO DEFENDANT'S
 ----- -X INTERROGATORIES

S I R S :

PLEASE TAKE NOTICE, that the following are plaintiff's Answers to defendant's Interrogatories propounded under date of February 16, 1973:

* * *

31. Plaintiff is not aware of any part of the truck which was in a damaged, non-functioning, or improperly operating condition as of the time of the fire, but infers that the engine functioned in such a way as to ignite gasoline fumes.
32. (a) Plaintiff cannot answer this question except by inference; he has no personal knowledge; (b) plaintiff relies on the doctrine of res ipsa loquitur and cannot, on the basis of his personal knowledge, specify which items or parts were defective, unsafe or unfit for use; (c) same answer as (b).
33. Plaintiff does not know of any notice which was given to the defendant before the accident regarding any unsafe condition of the truck.
34. The hazardous design of the engine and the gasoline feed arrangements and the position of the gas tank in the cab. The upright spark plugs created receptacles for gasoline from the gas line; the firewall between engine and cab was not designed to effectively limit fire spread from engine to cab; the gasoline tank and air vent pipes were in the cab - all created hazards by the defendant in the original design of the truck. The replacement parts that were installed may also have been General Motors parts manufactured in such a

way as to create an unreasonable hazard of igniting gasoline fumes.

35. Placing the gasoline tank within the cab of the truck, directly behind the seat of the occupants thereof and in immediate proximity of the position of occupants, with an interior air vent for the gasoline tank going through the cab; not providing for a sealable firewall in a truck intended to be used with power take off devices; upright spark plugs under fuel line.
36. Leak in gas line filled wells for spark plugs; A.C. spark plugs of defendant caused fire.
37. Plaintiff relies on the rule of strict liability and res ipsa loquitur.

* * *

74. In the interior of the cab.

* * *

76. The fact that flames spontaneously developed in the interior of the cab of the truck without any striking of a match or lighting of a cigarette or any source of ignition other than the truck mechanism.
77. Plaintiff has no scientific information except that he knows that a gasoline tank and vent should not be in the interior of a truck cab, and except that he knows that the interior of a truck should not burst into flames when the ignition is started.

* * *

Dated: New York, N.Y.
April 18, 1973

Yours, etc.
/s/ Arnold B. Elkind
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	72 Civ 1811 (RLC)
	:	NOTICE TO TAKE
SAME TITLE	:	<u>DEPOSITION</u>
-----X		

S I R S :

PLEASE TAKE NOTICE, that pursuant to the Federal Rules of Civil Procedure, the undersigned will take the testimony by deposition of the defendant, GENERAL MOTORS CORPORATION, by the person or persons familiar with the design, development, production and manufacture of the fuel and ignition systems and gasoline tank assembly in a 1966 GM truck, Serial #V4005F 42814E, Model #V4005, belonging to the Township of Weehawken, as well as other models designed, produced and manufactured by said General Motors Corporation prior and subsequent to 1966. Said deposition will take place at Room 4006, 122 East 42nd Street, New York, N.Y., on July 31, 1973, at 10:30 A.M., before Dorothy Dressel, a Notary Public of the State of New York, or before some other officer duly authorized by law to administer oaths. Said defendant will be examined concerning all matters not privileged relevant to the subject matter of the within action. Said examination will be continued from day to day until completed. You are invited to attend and cross-examine.

PLEASE TAKE FURTHER NOTICE, that at said time and place defendant is to produce any and all records and reports in its possession, or pertinent extracts thereof, of tests performed by or for said defendant, and the results of said tests, insofar as they relate to the problems which have arisen in the functioning of fuel and ignition systems and gas tank assemblies which it designs, develops, produces and manufactures for automobiles and trucks.

* * * * *

PLEASE TAKE FURTHER NOTICE, that at said time and place defendant is to produce any and all information, consumer complaints, data, and records of tests performed insofar as these relate to gasoline fume leakage and fires occurring in the above mentioned 1966 GM truck and in any other motor vehicles in which similarly designed fuel and ignition systems and gas tank assemblies are or have been used.

* * * * *

PLEASE TAKE FURTHER NOTICE, that at said time and place defendant is to produce any and all engineering and design sketches and drawings of the fuel and ignition systems and gas tank assemblies of the above mentioned 1966 GM truck, as well as the same information insofar

as it relates to design alternatives which said defendant considered or may have considered prior to adopting the design of said systems and assemblies in the above mentioned 1966 GM truck.

Dated: New York, New York
July 2, 1973

Yours, etc.

/s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

TO:

SIMPSON, THACHER & BARTLETT, ESQS.
Attorneys for Defendant
1 Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x Civil Action File
SAME TITLE : No. 72-1811 (RLC)
PLAINTIFF'S
----- -x INTERROGATORIES

S I R S :

PLEASE TAKE NOTICE, that you are hereby required to answer the following interrogatories, pursuant to the Federal Rules of Civil Procedure, within thirty (30) days from the date of service hereof, and to provide supplemental answers thereto to the date of trial when additional information is ascertained.

The accident hereinafter referred to occurred on the 14th day of August, 1971.

1. (a) Did General Motors Corporation, or one of its divisions, manufacture and distribute a 1966 model dump truck, Serial # V4005F42814E?

(b) State the date when defendant began manufacturing this model.

(c) State the date its assembly was completed.

(d) State the date it was shipped to a distributor.

(e) State to whom it was shipped for distribution and sale.

2. (a) Does General Motors Corporation still manufacture, assemble and distribute this particular model or truck type with the same fuel and ignition systems and gasoline tank assembly? If not, then

(b) Please state, in detail, what changes have been made to this particular type of truck regarding its fuel and ignition systems and gasoline tank assembly.

(c) State what, if any, technical difficulties or any other reasons prompted your decision to make such changes.

3. How long has General Motors Corporation been manufacturing this type of truck with the same fuel and ignition systems and gasoline tank assembly as is found in the truck with Serial # V4005F42814E?

4. (a) Did General Motors Corporation, or any of its divisions, design and/or develop (i) the ignition system, (ii) the fuel system and (iii) the gasoline tank assembly used in the 1966 dump truck Serial # V4005F42814E?

* * *

Dated: New York, N.Y.
July 15, 1973

Yours, etc.

/s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

21a

TO:

SIMPSON, THACHER &
BARTLETT, ESQS.
Attorneys for Defendant
1 Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
 SAME TITLE : Civil Action File
 : No. 72-1811 (RLC)
 : DEFENDANT'S ANSWERS
 ----- -x : TO PLAINTIFF'S
 INTERROGATORIES

S I R S :

PLEASE TAKE NOTICE, that the following are defendant's answers to plaintiff's interrogatories dated July 15, 1973:

1. (a) General Motors Corporation manufactured and sold a cab chassis with the serial number indicated.
 - (b) Beginning of 1966 model year.
 - (c) July 21, 1966
 - (d) The vehicle was sold to the business enterprise identified in response to interrogatory 1 (e), infra, and it left its final assembly point destined for that buyer's premises on July 22, 1966.
 - (e) McGuiness GMC Trucks, Inc., Jersey City, New Jersey.
2. (a) No.
 - (b) The V4000 model line has been discontinued.
 - (c) We are aware of no technical difficulties that prompted the discontinuation of this model line. The discontinuation was a business decision.

3. A V4000 cab chassis with substantially similar fuel and ignition systems and gasoline tank assembly was sold by defendant from the 1960 through the 1966 model year.

4. General Motors Corporation designed the ignition system, fuel system and gasoline tank assembly of the cab chassis V4005F4.314E.

* * *

Dated: New York, New York
October 29, 1973

Yours, etc.

SIMPSON THACHER & BARTLETT

By /s/ Roy F. Reardon
A Member of the Firm

Attorneys for Defendant
General Motors Corporation
Office and P.O. Address
One Battery Park Plaza
New York, New York 10004
483-9000

TO:

ARNOLD B. ELKIND, ESQ.
Attorney for Plaintiff
Office and P.O. Address
122 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	--X	Civil Action File
	:	No. 72-1811 (RLC)
SAME TITLE	:	
	:	<u>NOTICE OF MOTION</u>
-----	--X	

S I R S:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Arnold B. Elkind, sworn to the 8th day of January, 1974, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, before the Honorable Robert L. Carter, United States District Judge, at the United States Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 18th day of January, 1974, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 37 of the Federal Rules of Civil Procedure, for an order extending the plaintiff's time to complete discovery, decreeing that the design of the truck involved in the accident was defective and that the defect in the truck was a competent and producing cause of the plaintiff's injuries, and awarding the plaintiff the expenses and counsel fees attendant to the abortive deposition of defendant, General Motors Corporation.

Dated: New York, N.Y.
January 8, 1974.

Yours, etc.

/s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

TO:

SIMPSON THACHER &
BARTLETT, ESQS.
Attorneys for Defendant
1 Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: Civil Action File
SAME TITLE : No. 72-1811 (RLC)
:
-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ARNOLD B. ELKIND, being duly sworn, deposes and
says:

I am the attorney for the plaintiff above named and
make this affidavit in support of an application to apply
sanctions against the defendant, General Motors
Corporation, pursuant to Rule 37 of the Federal Rules of
Civil Procedure.

Plaintiff alleges herein that in August of 1971 he
suffered devastating third degree burns which have been
totally disabling. He claims that he sustained these
burns when the cab of a truck in which he was seated
suddenly burst into flames.

General Motors was the manufacturer of the truck
and is claimed to be responsible because of the sub-
standard design of the ignition system, fuel line, and
fuel tank of the truck. As part of the discovery herein
the plaintiff, on or about July 2, 1973, served a Notice,
[16 a, 17 a, 18 a] to take the testimony by deposition of the

defendant, General Motors Corporation, "by the person or persons familiar with the design, development, production and manufacture of the fuel and ignition systems and gasoline tank assembly". The deposition was to take place on July 31, 1973.

Finally, on December 19, 1973, the attorneys for the defendant produced one Perry C. Dooley, a staff engineer of General Motors.

By interrogatories it was established that the truck, a 1966 model, had not been manufactured by the defendant since 1966.

Examination of Mr. Dooley indicated that he had no responsibility for fuel tanks or for fuel line system (page 7, lines 20 and 21). His responsibilities during the period 1960 to 1966 were propeller shafts, frame rails and transmissions (page 8, lines 5 to 18). He had no responsibilities with either the ignition system or the fuel line system (page 8, lines 19 and 21).

At no time did he perform any inspections or testing of the fuel line system (page 10, line 17) or the ignition system (page 10, line 19), nor the components that make up the fuel distribution system (page 11, line 3) or the ignition system (page 11, lines 5 and 6).

It is obvious from the foregoing that General Motors has not complied with the plaintiff's Notice. General

Motors cannot claim that Mr. Dooley was brought in because of any misunderstanding as to the qualifications sought by the description in the plaintiff's Notice. After the witness's lack of qualifications was pointed out General Motors' counsel insisted that the witness produced was in compliance with the Notice (page 14, line 10).

The deliberate purpose of the defendant was to frustrate discovery. This is evidenced from the manner in which counsel conducted himself during the examination (see page 18, line 20, page 20, line 5, page 21, line 22, and particularly the directions by counsel to the witness not to answer questions simply because he did not like the form of the question, e.g., page 23, lines 21 to page 24, line 15, and page 27, lines 14 to 23).

The last two illustrations of the deliberate obstructive tactics of General Motors' counsel was particularly offensive. Inquiry was being made to determine the juxtaposition of a segment of the fuel line to the top of a spark plug. It had been established (page 24, line 20) that the over-all distance between the fuel line and a spark plug was an inch and

a half to two inches. This, however, would be on the diagonal (page 27, line 8). Counsel directed the witness not to answer those questions which sought to obtain a further refinement, to wit: the horizontal distance between the bottom of the fuel line and that horizontal point which would be directly over the top of the spark plug.

This, of course, was particularly relevant since a leak in the gas line running to the spark plug could account for the ignition of the fire in which the plaintiff sustained his injuries.

A copy of the transcript of the abortive attempt to examine General Motors is annexed hereto and made a part of this application.

Your deponent respectfully asks the Court for the following relief: (a) for an order extending the plaintiff's time to complete discovery, (b) for an order decreeing that the design of the truck involved in this accident was defective and that the defect in the truck was a competent and producing cause of the plaintiff's injuries, and (c) for an order awarding the plaintiff the expenses and counsel fees attendant to the abortive deposition of defendant, General Motors

Corporation.

/s/ ARNOLD B. ELKIND

Sworn to before me this

8th day of January, 1974.

DOROTHY DRESSEL
NOTARY PUBLIC, State of New York
No. 60-6099400
Qualified in Westchester County
Commission Expires March 30, 1974

RICHARD HUGHES v. GENERAL MOTORS CORPORATION

72 Civ 1811

ENDORSEMENT

U. S. DISTRICT COURT

FILED

FEB. 1 1974

S. D. OF N. Y.

The plaintiff's motion for sanctions under Rule 37, Federal Rules of Civil Procedure, is unopposed. The motion is denied without prejudice to plaintiff's right to renew it if the defendant does not produce, within 15 days from date of entry of this order, for examination "a person or persons familiar with the design, development, production and manufacture of the fuel and ignition systems and gasoline tank assembly" in a 1966 GM truck as described in plaintiff's notice to take defendant's deposition dated July 2, 1973.

SO ORDERED.

Dated: New York, New York
January 31, 1974

/s/ Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	NOTICE OF CROSS-MOTION
	:	<u>72 Civ. 1811 (RLC)</u>
	:	
-----X		

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of George H. Hempstead, III, sworn to on January 17, 1974, the exhibits annexed thereto and the accompanying memorandum of law, the undersigned will move this Court, before the Honorable Robert L. Carter, United States District Judge at the United States Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 21st day of January, 1974, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 37 and Rule 30(d) of the Federal Rules of Civil Procedure, directing that the deposition of defendant General Motors Corporation be closed, awarding the reasonable expenses incurred in opposing the plaintiff's motion, including attorney's fees, extending the time for both parties to complete discovery for ninety days, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 17, 1974

Yours, etc.

SIMPSON THACHER & BARTLETT

By /s/

A Member of the Firm
Attorneys for Defendant
General Motors Corporation
Office and P. O. Address
One Battery Park Plaza
New York, New York, 10004
(212) 483-9000

TO:

ARNOLD B. ELKIND, ESQ.
Attorney for Plaintiff
122 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
SAME TITLE : AFFIDAVIT
: 72 Civ. 1811 (RLC)
-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

GEORGE H. HEMPSTEAD, III, being duly sworn,
deposes and says:

1. I am an attorney associated with the firm of Simpson Thacher & Bartlett, counsel for defendant General Motors Corporation ("G.M.") in the above captioned proceeding. I am fully familiar with the matters hereinafter set forth and I respectfully submit this affidavit in opposition to plaintiff's motion for an order pursuant to Rule 37 of the Federal Rules of Civil Procedure imposing wholly unwarranted sanctions against G.M., and in support of G.M.'s cross-motion for an order declaring its deposition by plaintiff to be closed.
2. Plaintiff's motion seeks ". . . and order extending plaintiff's time to complete discovery, decreeing that the design of the truck involved in the accident was defective and that the defect in the truck was a competent and producing cause of the plaintiff's injuries, and

awarding the plaintiff the expenses and counsel fees attendant to the abortive deposition of defendant, General Motors Corporation. With the exception of plaintiff's application for additional time, G.M.

thoroughly opposes the instant motion on the grounds that:

- a. Defendant G. M. appeared for its deposition and stood ready to answer all proper questions;
- b. The termination of G.M.'s deposition was done at plaintiff's own election; and
- c. Plaintiff has not established any basis for the imposition of the relief requested.

3. Briefly, the complaint alleges that plaintiff suffered totally disabling burns in August, 1971, when the cab of truck in which he was seated burst into flames. Plaintiff further alleges that the fire resulted from the allegedly negligent design, manufacture, testing and assembly of the vehicle's ignition system, fuel line, and fuel tank.

* * * * *

5. With respect to G. M.'s deposition, the record is clear that pursuant to Notice dated July 2, 1973, G. M. appeared for its deposition by plaintiff on December 19, 1973. Although the deposition was originally scheduled for July 31, 1973, it was adjourned several

times to the convenience of both counsel and the witness. Mr. Perry C. Dooley, a G. M. Staff Engineer, appeared on behalf of G.M. to answer any factual and relevant questions plaintiff might have with respect to certain of the parts in the vehicle involved in the occurrence. Since the vehicle was a 1966 GMC truck which originally went into production in 1960, its original design, manufacture and testing occurred in the mid to late 1950's. Accordingly, in light of the many parts involved and the period of time which has elapsed, GM produced a Staff Engineer who could either answer plaintiff's questions or tell plaintiff the identity or source of obtaining relevant information.

6. At the outset of G.M.'s examination, counsel for both parties stipulated that the filing and sealing of the transcript be waived, that the deposition could be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if it were signed and sworn to before the Court, and that a copy of the deposition would be furnished to plaintiff's counsel without charge. It was further stipulated, subject to Court approval, that the deadline of December 31, 1973, for the completion of discovery by the parties, be extended to January 31, 1974. Finally, the following stipulation was entered:

"IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial." (Transcript, page 3, lines 6 through 9.) (emphasis supplied).

Attached hereto and made a part hereof as Exhibit "A" is a copy of the transcript of G.M.'s deposition by Mr. Dooley.

7. Notwithstanding the foregoing stipulation with respect to the form of questions, counsel for plaintiff refused to continue the examination even though counsel for G.M. clearly stated a willingness to continue with the deposition and to permit the witness to answer proper questions. (See Transcript, page 29, lines 1 through 10.)

8. Counsel for plaintiff is apparently operating under the mistaken belief that a corporate defendant must produce an "expert" to answer his "assuming" and hypothetical questions. As indicated in the accompanying Memorandum of Law, such is not the case. A corporate party need only produce an individual "with knowledge of the facts". G.M. has fully complied with this requirement by transporting a Staff Engineer from Michigan, at its own expense, to answer plaintiff's questions. The transcript of G.M.'s deposition is barren of any questions asking Mr. Dooley to describe the manufacture or testing of any of the many parts in the type of vehicle involved;

and, those questions relating to the design drawings were fully answered when properly phrased. (See Tr., p. 16, line 12 to p. 22, line 9).

9. G.M. respectfully submits that the record fails to support plaintiff's contention that G.M. has not complied with the Notice of Deposition. Rule 37 of the Federal Rules of Civil Procedure does not sanction the drastic relief requested. As indicated in the accompanying Memorandum of Law, only a failure to appear at the deposition would constitute a "noncompliance" to warrant such relief. Since G.M. did appear by Mr. Dooley and stood ready to proceed with its examination, plaintiff's motion should be denied.

10. Plaintiff's contention that Mr. Dooley was unable to answer the questions put to him is wholly without merit. The transcript, however, clearly indicates that plaintiff's counsel was totally unprepared with respect to the subject matter of the proposed examination and did not know how to properly phrase his questions, as indicated in the following colloquy:

"Q As I understand your testimony, you have told me that there is a spark plug in the Model 4000, the top of which would be about an inch and a half to two inches from the nearest part of the section of tube assembly that has been marked as B to C; is that right?

A To the best of my recollection in observing vehicles, yes.

Q Is that one and a half to two inches in the vertical plane?

MR. HEMPSTEAD: I think he has testified that it is not vertically above the spark plugs, it being the tube assembly.

MR. ELKIND: Yes, he has. That is not my question.

MR. HEMPSTEAD: Then, I do not understand your question as to what you mean by vertical plane.

MR. ELKIND: All he has to do is say no if it is not directly above and then we will come to the next question.

A You asked for a dimension in the vertical frame and there's an infinite number of planes that can go through a point.

So, we are talking about, again, as I recall, the closest point that the line comes to some portion of the plug, as best I remember, is about that figure.

Our problem, I think, is that that line is kind of diagonally occurring and it is difficult for us to communicate on a spacial relationship.

Q That is exactly what my trouble is. You put your finger right on my problem.

* * *

(Tr., p. 26, line 4 to p. 27, line 11)

In light of counsel's acknowledgment of what his "trouble" was, G.M. respectfully submits that there is

no basis for the relief which plaintiff now seeks.

11. During the examination of G.M., Mr. Dooley answered all questions to the best of his ability except when he was directed by his counsel that he should not answer because the form of the question was improper. Such directions were given by affiant because of the importance which plaintiff's counsel attributed to this examination. Notwithstanding the customary practice of permitting witnesses to answer over an objection to form and according counsel the opportunity to correct his question, I believe this examination should be conducted in a proper manner in its entirety.

12. Moreover, the allegation by plaintiff's counsel accusing G.M.'s counsel of purposely frustrating discovery, and being deliberately obstructionary and "offensive" is astounding in light of Mr. Elkind's own conduct -- conduct which may only be characterized as unbecoming of a member of the Bar and apparently intended to harass and embarrass counsel for defendant in the presence of his client:

MR. ELKIND: I am not going to continue with this examination here. We are going to go down to Court because your objections are not at all well taken. This is not the proper witness.

MR. HEMPSTEAD: You ask him a factual question.

MR. ELKIND: There could not be anything more factual than that.

MR. HEMPSTEAD: You are drawing assumptions.

MR. ELKIND: You are going to have a good fight with me, buster, because I've been around. I know bullshit when I see it.

* * * *

MR. HEMPSTEAD: We are prepared to proceed right here and now and if you bring a proper motion, sir . . .

MR. ELKIND: You can tell him not to answer any goddam question.

* * * *

MR. HEMPSTEAD: You ask your questions properly, sir, and there will be no objection to the form.

MR. ELKIND: Don't tell me how to ask a proper question. Who do you think you are talking to." (at pages 28-29 of transcript.)

Clearly, defendant's counsel and witness stood ready to proceed with the deposition and to answer all proper questions. Plaintiff's counsel's vulgar and emotional language clearly demonstrates his inability to properly conduct himself at the examination of a witness. G.M. respectfully submits that the termination of its deposition was the direct responsibility of plaintiff's counsel. (See page 29, lines 9 and 10 of the transcript.)

For this reason G.M. prays that plaintiff's motion be denied and defendant's deposition be declared closed.

* * * * *

WHEREFORE, for all of the reasons stated above, defendant General Motors Corporation respectfully prays that plaintiff's motion be denied, that an additional period of time, up to and including April 30, 1974, should be granted to both sides to complete discovery, and that an order be issued declaring that the deposition of defendant General Motors Corporation closed, that defendant General Motors Corporation be awarded the fees and expenses, including attorney's fees, incurred in opposing plaintiff's motion, and for such other and further relief as to the Court may be just and proper.

Dated: New York, New York
January 17, 1974

/s/ George H. Hempstead, III
GEORGE H. HEMPSTEAD, III

Sworn to before me this
17th day of January, 1974
Pearl Jones

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SAME TITLE : 72 Civ. 1811 (RLC)
: AFFIDAVIT IN OPPOSITION
: TO CROSS-MOTION
-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ARNOLD B. ELKIND, being duly sworn, deposes and
says:

I am the attorney for the plaintiff above named and
make this affidavit in opposition to the defendant's
cross-motion to close the deposition of the defendant.

Assuming that the Court does not grant plaintiff's
motion to impose sanctions on General Motors in accordance
with plaintiff's principal motion, it will be necessary
for the plaintiff to proceed with the deposition of
General Motors. At the conclusion of the abortive
deposition in which the defendant produced an incompetent
witness, the record shows the following as the last
statement (p.29):

"Mr. Elkind: This examination is now
suspended until we can get rulings
from the Court."

When the deposition of General Motors does proceed
the following rulings will be needed:

1. That General Motors must produce an

employee who is familiar with the design, development, production and manufacture of the fuel and ignition systems and gasoline tank assembly of the truck in question rather than an employee whose training and energies have been in propeller shafts, frame rails and transmissions.

2. That counsel for General Motors be instructed not to direct the witness to refuse to answer questions which in said counsel's judgment may seem to be defective in form. Counsel should be instructed that all that is necessary to protect his record is to note his objection to the form of the question and permit his client to answer those questions.

Your deponent assures the Court as follows:

Deponent is thoroughly familiar with the Federal Rules of Civil Procedure, was carefully prepared on the subject matter of the deposition and is not prone, except upon extreme provocation, to react with hostility in the usual adversary situation. The transcript does not reflect events which preceded the actual deposition in question. Your deponent does not wish to burden the Court with the recital of the justification of your deponent's untempered language. Certainly there was no intention to embarrass Mr. Hempstead before Mr. Dooley. However, it does remain important to the parties litigant to conduct discovery procedures in accordance with the Rules so that the marshaling of evidence can, in effect, be on at least a

"semi-cooperative" basis.

WHEREFORE, your deponent respectfully prays that the defendant's application for an order closing the deposition of General Motors and awarding counsel fees to General Motors be denied.

/s/ ARNOLD B. ELKIND

Sworn to before me this

23rd day of January, 1974

DOROTHY DRESSEL
NOTARY PUBLIC, State of New York
No. 60-6099400
Qualified in Westchester County
Commission Expires March 30, 1974

RICHARD HUGHES v. GENERAL MOTORS CORPORATION
(Memo endorsed on back of defendant's
cross-motion papers dated January 17, 1974)

2/6/74

Motion denied.

So ordered.

/s/ Robert L. Carter
U.S.D.J.

U.S. DISTRICT COURT
FILED
FEB. 7, 1974
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

SAME TITLE

DEFENDANT'S SECOND SET
: OF INTERROGATORIES
Index No. 72 Civ. 1811

----- -x

S I R S :

The defendant, General Motors Corporation, requests that the plaintiff answer within thirty (30) days, in accordance with the Federal Rules of Civil Procedure, the following supplemental interrogatories:

* * *

15. Specifically identify each and every document that plaintiff intends to introduce into evidence upon the trial of this action.

* * *

Dated: New York, New York
February 11, 1974

SIMPSON THACHER & BARTLETT

By /s/ James J. Hagan
A Member of the Firm

Attorneys for Defendant
Office and P.O. Address
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

TO: ARNOLD B. ELKIND, ESQ.
Attorney for Plaintiff
122 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
 SAME TITLE 72 Civ.1811 (RLC)
 : REQUEST FOR
 : PRODUCTION OF
 ----- -x DOCUMENTS

S I R S :

PLEASE TAKE NOTICE that plaintiff, pursuant to the provisions of Rule 34 of the Federal Rules of Civil Procedure, hereby requests that defendant produce and permit plaintiff or his attorney to inspect and copy at 10:00 A.M. on the 1st day of April, 1974, at the office of plaintiff's attorney, Room 4006, 122 East 42nd Street, New York, N.Y., the following documents:

* * *

2. Any letters or memoranda on benefit-to-cost rationale on the utilization of Patent No. 2,779,498, patented January 29, 1957 by Edward N. Cole and Edward J. Naudzius as Assignors to General Motors Corporation, which invention covered a fuel tank and fitting.

* * *

Dated: New York, N.Y.
March 1, 1974

Yours, etc.

ARNOLD B. ELKIND

 ARNOLD B. ELKIND
 Attorney for Plaintiff
 122 East 42nd Street
 New York, N.Y. 10017

TO:

SIMPSON THACHER & BARTLETT, ESQS.
Attorneys for Defendant
One Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X

SAME TITLE

1

72 Civ. 1811 (RLC)

2

PLAINTIFF'S ANSWERS

.....X

TO DEFENDANT'S SECOND

SET OF INTERROGATORIES

S I R S :

PLEASE TAKE NOTICE, that the following are plain-
tiff's answers to defendant's second set of interrogator-
ies propounded under date of February 11, 1974:

* * *

15. I am not competent to respond to this interrogatory.

* * *

Dated: New York, N.Y.
March 1, 1974

Yours, etc.

/s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

TO:

SIMPSON THACHER & BARTLETT, ESQS.
Attorneys for Defendant
One Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	72 Civ. 1811 (RLC)
SAME TITLE	:	<u>NOTICE OF MOTION</u>
-----X	:	

S I R S.

PLEASE TAKE NOTICE that, upon the annexed affidavit of Arnold B. Elkind, sworn to the 20th day of March, 1974, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, before the Honorable Robert L. Carter, United States District Judge, at the United States Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 29th day of March, 1974, at 10:00 A.M., for an Order pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure and Rule 15 of the Civil Rules of the United States District Court for the Southern District of New York, directing the defendant to submit to a continued deposition by Edward N. Cole; directing the defendant to furnish to the attorney for the plaintiff copies of exhibits in its possession which were identified during the course of the deposition of defendant on March 11, 1974; enlarging the plaintiff's time to complete discovery until after the plaintiff has completed the foregoing deposition and the defendant

has supplied the documents requested in plaintiff's Request for Production of Documents pursuant to Rule 34 of the Federal Rules of Civil Procedure; and for such other and further relief as to the Court may seem just and proper.

Dated: New York, N.Y.
March 21, 1974

Yours, etc.

/s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

TO:

SIMPSON THACHER &
BARTLETT, ESQS.
Attorneys for Defendant
One Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SAME TITLE

:

72 Civ. 1811 (RLC)

:

-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ARNOLD B. ELKIND, being duly sworn, deposes and
say

I am the attorney for the plaintiff above named,
who sustained devastating burns when the entire interior
of the cab of a truck designed and manufactured by the
defendant suddenly burst into flames. The gasoline tank
for the truck was located in the cab of the truck immediately
behind the seat.

In a deposition taken by the defendant on March 11,
1974, the Battalion Chief of the Jersey City Fire Depart-
ment testified that, based on his examination of the truck
and the history obtained, the fire, in his expert opinion,
occurred as a result of the ignition of gasoline vapors
which were in the cab of the truck at the time of ignition.

This motion by plaintiff is for an order requiring
the defendant to be further examined by Edward N. Cole, who
is now the President of the defendant. On March 11, 1974,
pursuant to the order and decision of this Court dated
January 31, 1974, copy of which is annexed hereto as

Exhibit 1, [appendix page 31a], the defendant produced and deponent examined John E. Hubbard, a Vehicle Emissions Engineer of the defendant. During the course of Mr. Hubbard's deposition he was able to identify a number of drawings containing design details, specifications and manufacturing standards for those parts which, in the aggregate, could be described as the fuel system and gasoline tank assembly of the truck in question.

These drawings were identified during the course of the deposition, but defendant's counsel took under advisement deponent's request that copies of said drawings be made available to the plaintiff.

Copies of these drawings necessarily must be furnished to the plaintiff so that their significance and implications to the presence of gasoline vapors in the cab can be discussed with a knowledgeable expert and so that the case can be prepared and presented to the Court and jury who must decide whether or not the defendant's design was negligent.

A second branch of plaintiff's application, therefore, is that the defendant be ordered to furnish plaintiff with a copy of each exhibit which was produced by the defendant and identified during the deposition of the defendant taken on March 11, 1974.

The detailed drawings disclosed that the filler tube for the gasoline tank was manufactured and stored separately from the fuel tank itself, and that when the cab of the truck is assembled the filler tube is connected in accordance with specifications by means of a flexible conduit and clamps. Both the flexible conduit and clamps, it appeared, are located within the cab of the truck and obviously constitute a potential source for the presence of gasoline fumes within the cab of the truck.

The truck is a 1966 model, and previous discovery established that the defendant made this particular model without substantial changes during the model years 1960 to 1966. A search of the U.S. Patent Office disclosed that Edward N. Cole, the person whom plaintiff seeks to examine, filed claims and ultimately obtained patents assigned to the defendant in 1954 and in 1959 which pertain to fuel tanks, fuel tank installations, and fuel tank fittings. Mr. Cole is still with General Motors and is now the President. One of the patents above referred to is No. 2,779,498. A copy of the patent is annexed hereto and is marked Exhibit 2. [Patent No.2,779,498]. In the prospective witness' discussion he writes:

"In place of making the filler tube and tank as an integral unit, it has sometimes been the practice to make those parts separately and ultimately to connect them in a vehicle

by means of a flexible conduit and suitable clamps. This latter expedient is not entirely satisfactory as leakages may occur at either or both of the two joints necessarily formed and the installation in a given vehicle cannot be carried out as expeditiously or as quickly as would be desired.

An object of the invention is the provision of a fuel tank in combination with a tubular filling spout member which is attachable or detachable from the tank in a construction which provides an improved seal joint.

Another object of the invention is the provision of a fuel tank with a tubular filling spout member having a sealed universal connection leading to the tank.

A feature of the invention resides in a fuel tank having an inlet tube member affixed thereto and a filler tube member telescopically arranged with respect to the inlet tube member and sealed thereto by means of an annular ring of resilient and tough plastic material resistant to the chemical action of the fluid to be placed in the tank."

An extended portion of Mr. Hubbard's examination was devoted to identifying an individual in General Motors who would be familiar with the manufacturing procedures and the quality control measures employed by the defendant in connection with the production, assembly and testing of the fuel system and gasoline tank assembly. The witness Hubbard testified that during part of the production years of the truck in question he was the Liaison Engineer assigned to the resolution of problems which arose at the interface of engineering and manu-

facturing. He was unable to identify anyone now with General Motors who could describe the relevant assembly procedures, and he was totally unfamiliar as to what measures the defendant employed to ascertain that the clamps effectively and permanently sealed the joint between the filler tank assembly and the fuel tank itself.

It is obvious from Exhibit 2 [Patent No. 2,779,498] that Mr. Cole would at least be one individual at General Motors who would have the knowledge and have access to the knowledge necessary to describe the engineering and quality control operations which are germane to plaintiff's evidence.

* * * * *

WHEREFORE, plaintiff respectfully requests an order directing the defendant to submit to a continued deposition by Edward N. Cole; directing the defendant to furnish to the attorney for the plaintiff copies of the exhibits in its possession which were identified during the course of the deposition of the defendant on March 11, 1974; enlarging the plaintiff's time to complete discovery until after the plaintiff has completed the foregoing deposition and the defendant has supplied the documents requested in plaintiff's

Request for Production of Documents pursuant to Rule
34 of the Federal Rules of Civil Procedure.

/s/ ARNOLD B. ELKIND

Sworn to before me this

20th day of March, 1974

DOROTHY DRESSEL
NOTARY PUBLIC, State of New York
No. 60-6099400
Qualified in Westchester County
Commission Expires March 30, 1974

2,779,493

FUEL TANK AND FITTING

Edward N. Cole, Detroit, and Edward J. Naudzius, Birmingham, Mich., assignors to General Motors Corporation, Detroit, Mich., a corporation of Delaware

Application September 3, 1954, Serial No. 454,110

1 Claim. (Cl. 220-86)

This invention relates to tanks and more particularly to fuel or gasoline tanks employed in vehicles and to which tube members are attached as fittings to facilitate filling of the tanks.

When fuel tanks are made with filler tubes integral therewith, the devices constitute cumbersome pieces which are difficult to ship and to store. The tubes are generally of considerable length which factor must be considered in providing sufficient space for the shipment or storage. Handling of the devices is not only difficult because of the tubular protuberances but it must be with care as any undue strain in the junctions between the tubes and the corresponding tanks may cause damage and leakages. In place of making the filler tube and tank as an integral unit, it has sometimes been the practice to make those parts separately and ultimately to connect them in a vehicle by means of a flexible conduit and suitable clamps. This latter expedient is not entirely satisfactory as leakages may occur at either or both of the two joints necessarily formed and the installation in a given vehicle cannot be carried out as expeditiously or as quickly as would be desired.

An object of the invention is the provision of a fuel tank in combination with a tubular filling spout member which is attachable or detachable from the tank in a construction which provides an improved seal joint.

Another object of the invention is the provision of a fuel tank with a tubular filling spout member having a sealed universal connection leading to the tank.

A feature of the invention resides in a fuel tank having an inlet tube member affixed thereto and a filler tube member telescopically arranged with respect to the inlet tube member and sealed thereto by means of an annular ring of resilient and tough plastic material resistant to the chemical action of the fluid to be placed in the tank.

Another feature comprises tubular members cooperatively serving as feed inlet means for a fuel tank and these members being universally movable with respect to each other and provided with stop means for limiting their relative axial movement.

These and other important features of the invention will now be described in detail in the specification and then pointed out more particularly in the appended claim.

In the drawings:

Fig. 1 is an elevational view with portions in section and showing an automobile gasoline tank and an inlet tube member associated therewith, the construction embodying one form of the present invention; and

Fig. 2 is an enlarged view partially in section of a portion of the construction shown in Fig. 1.

In the illustrated apparatus a conventional fuel tank 10 is shown adapted to be mounted in a horizontal position at the rear end of an automobile. In the present instance, however, the upper portion of the tank is provided with an opening 12 defined by a marginal portion 14 which is welded at 16 to an inlet tubular member 18. Tubular member 18 is outwardly flared at its outer end 20 and telescopically receives one end of a tubular filling spout member 22. The other end of the member 22 is provided with a supporting bracket arrangement generally indicated at 24 by means of which the member may be held to a portion 26 of the vehicle body. The filler tube member 22 is curved and extends in an upward direction so that one end is convenient and accessible for the

introduction of fuel, and has secured thereto a removable cap 28.

The end of the tube member 22 that extends within the member 18 is formed with an annular groove 30 for the reception and retention of a sealing ring 32. The member 22 is also provided with an annular ridge or shoulder 34 which constitutes a stop means limiting inward and axial movement thereof with respect to the spout member 18. It will be noted that an annular space 36 is provided between the two members 18 and 22 because of the relative proportions of the latter. A space 37 is also provided between the extreme end of the tube 22 and the member 18.

The sealing ring 32 is made of a plastic material of extreme toughness but which is also fairly soft, flexible, non-porous and unaffected by the fuel as for example, a polymerized tetrafluoro-ethylene known commercially as "Teflon." Other plastics such as polyethylene or vinyl chlorides, fluorides, or mixtures of them may also be used. Neoprene or any rubber of suitable toughness and softness and which is not adversely affected by the fuel or liquid to be handled will be satisfactory.

It will be seen from the above that tanks 10 with the short inlet tube members 18 permanently affixed thereto should present no problems in shipping, storing or installing as they constitute compact units which are easily handled and have no awkward protuberances. It will also be understood that when a given tank 10 has been installed in a vehicle, it is an easy and quickly performed operation to insert a tubular filling spout member 22 with a ring 32 in place thereon so that the members 18 and 22 are brought into telescopic and sealed relation. Alignment of the parts is not critical as the clearances 36 and 37 and the nature of the sealed joint employing the ring 32 permit great latitude in supporting the upper end of the member 22 by the bracket arrangement 24. The tube 22 cannot enter the tube member 18 for too great a distance because of the stop shoulder 34. Movement of the tube 22 in the other direction or away from the tank 10 is prevented by the connection of the bracket 24 with the body portion 26.

We claim:

A fuel tank for use on an automotive vehicle, said tank being provided with an inlet tubular member having an annular flared edge at one free end and another end joined integrally and permanently to an upper side portion of said tank, a curved filling spout member with one end portion arranged remote from said tank and being fitted with a bracket arrangement for support on said vehicle and the other end portion of said spout member being arranged in telescopic relation with said tubular member, said bracket arrangement being adapted to prevent longitudinal movement of said spout member, a groove formed in said other end portion of said spout member, an annular sealing ring of tough flexible plastic material retained in said groove and resiliently pressing outwardly against said tubular member, a stop shoulder formed on said spout member as an annular ridge facing the said flared edge, and a clearance being provided between said members to permit universal movement adequate to compensate for variations in the relative positions of said tank and bracket arrangement.

References Cited in the file of this patent

UNITED STATES PATENTS

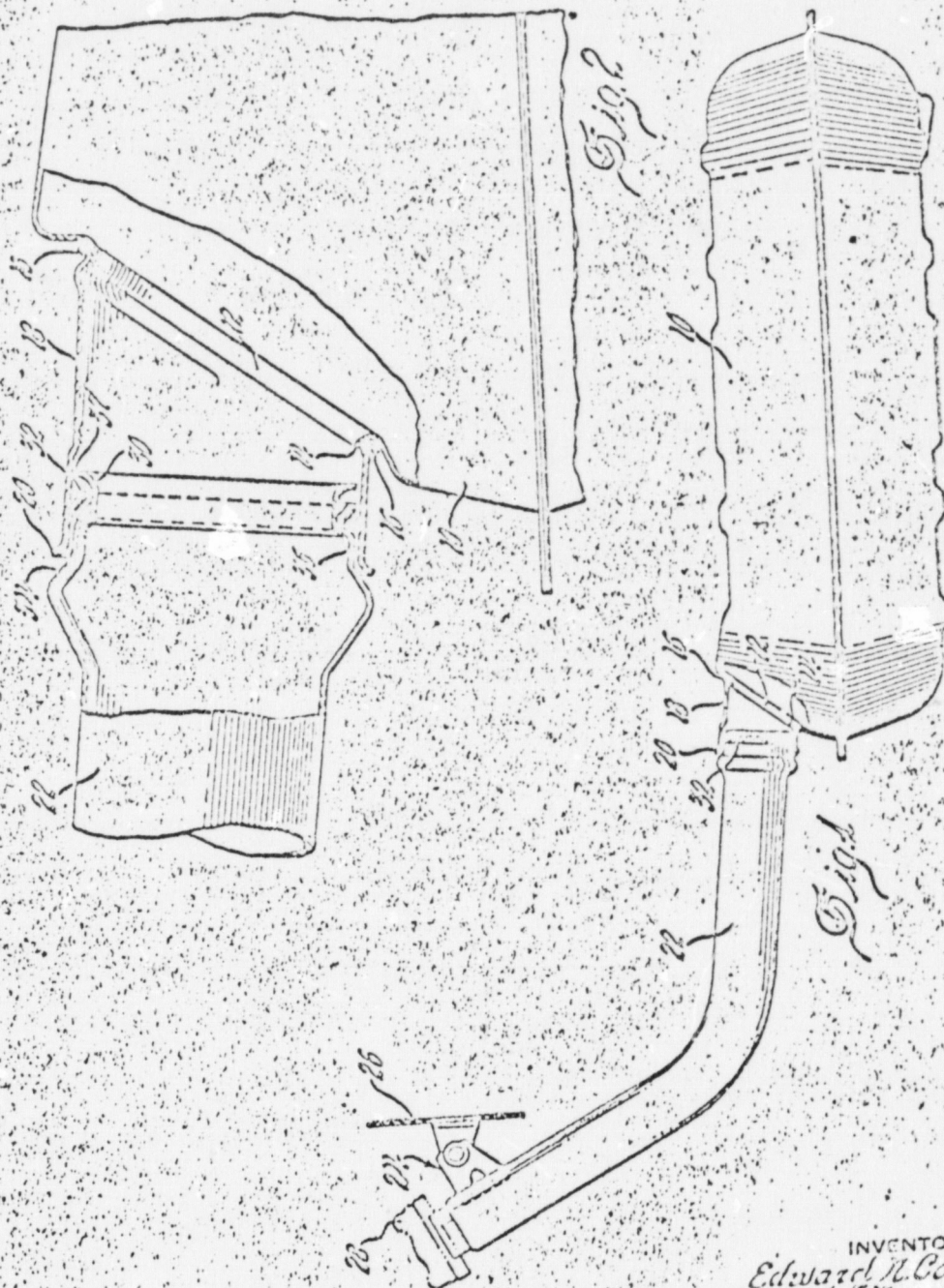
2,104,461	Holm	Jan. 4, 1938
2,466,076	Bentley	Apr. 5, 1949
2,516,743	Allin	July 25, 1950
2,684,779	Rafferty	July 27, 1954

FOREIGN PATENTS

2,734	Great Britain	of 1973
507,026	Great Britain	June 3, 1939

Jan. 29, 1957

E. N. COLE ET AL
FUEL TANK AND FITTING
Filed Sept. 3, 1954



INVENTORS
Edward N. Cole &
Edward J. Marzjusz
BY
C. F. Little
ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: AFFIDAVIT IN
SAME TITLE : OPPOSITION
: 72 Civ. 1811 (RLC)
-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WHITNEY NORTH SEYMOUR, being duly sworn, deposes
and says:

1. I am a member of the firm of Simpson Thacher
& Bartlett, the attorneys for the defendant, General
Motors Corporation ("General Motors"), in the within
action and I make this affidavit in partial opposition
to the motion of the plaintiff to conduct further
discovery of General Motors in the nature of the
production of documents and a third deposition of the
defendant by its president, Edward N. Cole.

* * * * *

The Request for the Deposition
of Edward N. Cole Constitutes
Harrassment and Should Be Denied

5. The last and most troublesome aspect of
plaintiff's motion is the application for an order
directing the deposition of the president and chief
executive officer of a major corporation for the
purpose of determining quality control procedures

utilized eight years ago solely on the basis that an expired and obscure patent relating to a gas tank, the type of which was not in the vehicle that is the subject of this action, is in his name. In light of the manner in which plaintiff's counsel has conducted discovery of General Motors in this case, such a request is nothing more than a litigation ploy designed to harass a party. The true nature and purpose of plaintiff's strategy can only be fully appreciated by calling the Court's attention to some pertinent facts of the case and to the prior conduct of plaintiff's counsel during discovery of General Motors.

6. Plaintiff's claim is based upon an alleged defect in a 1966 truck manufactured by General Motors.* The vehicle left General Motors' possession in July, 1966, almost eight years ago and five years before the accident occurred. During its use as a garbage or refuse truck on an almost daily basis by the Town of Weekawken,

* General Motors, as do most truck manufacturers, manufactures a cab and chassis only. A body, in this case a dump assembly, was put on the chassis by a third party at the request of plaintiff's employer.

plaintiff's employer, it was driven tens of thousands of miles. Very few records were kept reflecting its repair and accident history and General Motors can never ascertain the condition of the vehicle and changes made to it as of the date of the accident. In fact, the plaintiff at his deposition characterized the condition of the vehicle at or about the time of the accident as "junk". It is known, however, that a starter switch was put into the vehicle the day before the accident by a local garage in New Jersey. The vehicle was sold for junk several months after the accident and General Motors never had an opportunity to inspect it as suit was not commenced until May, 1972. General Motors is still trying to ascertain whether the plaintiff had an inspection of the vehicle but it has been unsuccessful to date although the case has been pending for almost two years.

7. The claim against General Motors, as broadly stated in the complaint, is that the fire in the vehicle was caused by the improper position of the gas tank in the cab of the truck "...in that the replacement ignition device set the vehicle afire.". In response to General Motors' Notice for Discovery and Inspection requesting production of the vehicle or, if it was no longer available, reports of inspection and photographs, plaintiff

responded (a) that the vehicle and parts thereof were not in the plaintiff's possession or control, and (b) that "plaintiff does not admit that any report of an expert exists" and he produced four photographs of the truck taken after the accident. In an answer to the interrogatories designed to compel plaintiff to describe the manner in which it is claimed that the vehicle was defective, plaintiff responded:

"(a) Plaintiff cannot answer this question except by inference; he has no personal knowledge; (b) plaintiff relies solely on the doctrine of res ipsa loquitur and cannot, on the basis of his personal knowledge, specify which items or parts were defective, unsafe or unfit for use; (c) same answer as (b)."

However, plaintiff did specify in answers to interrogatories the manner in which it was claimed that the design of the vehicle was improper in that:

"The upright spark plugs created receptacles for gasoline from the gas line; the fire wall between the engine and the cab was not designed to effectively limit fire spread from engine to cab; the gasoline tank and air vent pipes were in the cab - all created hazards by the defendant in the original design of the truck."

With the description of plaintiff's claims in this posture, plaintiff noticed and General Motors produced in New York a witness for a deposition of General Motors by the name of Perry Dooley, a staff engineer (Truck Chassis Design) from Michigan. Mr. Dooley testified at length concerning

the placement of the gas lines around the cab and engine compartment and drawings describing these items in the model in question were produced, explained and marked. As a chassis engineer, Mr. Dooley was thoroughly familiar with the placement of the gas tank within the vehicle and he had knowledge of the routing of the gas lines from the gas tank to the engine. However, plaintiff's counsel did not see fit to ask Mr. Dooley questions concerning the placement of the gas tank and insisted on phrasing many of his questions in improper form thereby provoking objections by General Motors' counsel. The following portions of the transcript of Mr. Dooley's deposition amply demonstrate the inability of plaintiff's counsel to question a technical witness and, through intemperate and vulgar remarks, his intention to embarrass and harass the defendant. The transcript reads at pp. 26 et seq:

"Q. As I understand your testimony, you have told me that there is a spark plug in the Model 4000, the top of which would be about an inch and a half to two inches from the nearest part of the section of tube assembly that has been marked as B to C; is that right?

A. To the best of my recollection in observing vehicles, yes.

Q. Is that one and a half to two inches in the vertical plane?

MR. HEMPSTEAD: I think he has testified that it is not vertically above the spark plugs, it being the tube assembly.

MR. ELKIND: Yes, he has. That is not my question.

MR. HEMPSTEAD: Then, I do not understand your question as to what you mean by vertical plane.

MR. ELKIND: All he has to do is say no if it is not directly above and then we will come to the next question.

A. You asked for a dimension in the vertical frame and there's an infinite number of planes that can go through a point.

So, we are talking about, again, as I recall, the closest point that the line comes to some portion of the plug, as best I remember, is about that figure.

Our problem, I think, is that that line is kind of diagonally occurring and it is difficult for us to communicate on a spacial relationship.

Q. That is exactly what my trouble is.
You put your finger right on my problem.

You say that the dimension you have given of an inch and a half to two inches is diagonal.

Assuming that a plumb line were dropped from the tube assembly at its nearest point to a spark plug, what would be the measurement?

MR. HEMPSTEAD: Objection.

Don't answer it.

Q. From the top of the spark plug to that plumb line.

MR. HEMPSTEAD: Objection.

Don't answer it.

MR. ELKIND: I am not going to continue with this examination here. We are going to go down to Court because your objections are not at all well taken. This is not the proper witness.

MR. HEMPSTEAD: You ask him a factual question.

MR. ELKIND: There could not be anything more factual than that.

MR. HEMPSTEAD: You are drawing assumptions.

MR. ELKIND: You are going to have a good fight with me, buster, because I've been around. I know bullshit when I see it.

I am not going to waste time with you. We are going to go to Court. I will call up and see if we can make an appointment.

MR. HEMPSTEAD: We are prepared to proceed right here and now and if you bring a proper motion, sir --

MR. ELKIND: You can tell him not to answer any goddam question.

MR. HEMPSTEAD: You can bring on a proper motion.

MR. ELKIND: Put this on the record. I am going to move to find the defendant in this case for obstructing an examination.

MR. HEMPSTEAD: File whatever --

MR. ELKIND: Rule 37A.

MR. HEMPSTEAD: You ask your questions properly, sir, and there will be no objection to the form.

MR. ELKIND: Don't tell me how to ask a proper question. Who do you think you are talking to.

MR. HEMPSTEAD: Sir --

MR. ELKIND: This examination is now suspended until we can get rulings from the Court." (Emphasis added.)

8. Following this distasteful display, plaintiff's counsel moved for a further deposition of General Motors on the ground that Mr. Dooley lacked knowledge of the fuel line system on the vehicle in question. The motion was denied but General Motors was directed to produce another witness with knowledge of these facts. General Motors complied with the order and produced John E. Hubbard, another engineer from Michigan, who designed the fuel line system from the gas tank to the engine on this vehicle and who was uniquely well qualified to give in depth answers to questions in this area. However, instead of inquiring into this subject matter in detail, plaintiff's counsel briefly repeated questions asked and answered by Mr. Dooley in the prior deposition and then embarked upon an inquiry of subject matter relating to

the filler neck of the gas tank where the gas is pumped into the tank from an outside source. This is the precise area of expertise in which Mr. Dooley was qualified to give responses in his capacity as a chassis engineer but plaintiff's counsel never bothered to ask these questions. Instead, he aborted the deposition of Mr. Dooley and made a motion for the production of another witness. Fortunately, Mr. Hubbard had a good working knowledge of this subject matter and was able to describe the design of the filler neck and identify and discuss an engineering drawing relating to this area.*

9. The foregoing is a good example of this litigation tactic of compelling an adversary to bring deposition witnesses long distances at great cost and expense and instead of questioning them on matters relating to their expertise, an inquiry is made into other areas solely for the purpose of laying a foundation for further harassment in the nature of requests for further discovery. If plaintiff's intentions are not clear up to this point, the subject motion makes it apparent what the intention of plaintiff's counsel is. Under the

* Transcripts of these depositions are made available to the Court herewith.

guise of seeking the production of a witness who is familiar with the quality control procedures in use at one of General Motors' assembly plants in 1966 when the subject vehicle was built, application is now made for an order directing the deposition of the president of General Motors solely because he co-authored a patent dealing with gas tank filler necks in 1957. As indicated in the affidavit of Herbert Furman also submitted in opposition to the motion, this patent was not utilized in the vehicle involved in the accident and has since expired. The connection between Mr. Cole's patent and this case is, to say the least, remote. For the Court to countenance plaintiff's conduct as outlined above by granting the branch of the motion seeking the deposition of Edward N. Cole, it would not only be unfair to the defendant but would encourage similar tactics by plaintiff's counsel in this case and others in which a large company is a target defendant. Furthermore, it would establish a precedent whereby General Motors could be compelled to produce for deposition all authors of patents relating to gas tanks, gas lines and engines who are still employed by it. Clearly, this would only encourage harassment of General Motors and would be contrary to the spirit of a relevant and orderly discovery

in this case.

10. Notwithstanding any of the foregoing and in the interest of full and fair disclosure, I requested General Motors to conduct a search to determine if there still is a person employed by the company who is familiar with the quality control procedures utilized by General Motors in 1966 at the plant where the subject vehicle was built. If such a person can be found, he will be produced for a deposition at a place convenient for him in the Detroit, Michigan area.

WHEREFORE, it is respectfully requested that those branches of plaintiff's motion which request production of irrelevant and protected documents and the deposition of Edward N. Cole, be, in all respects, denied.

/s/ Whitney North Seymour

Whitney North Seymour

Sworn to before me this

8th day of April, 1974

AMY MASTANDREA

A F F I D A V I T

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

HERBERT FURMAN, of lawful age, duly sworn on his oath, deposes and says that:

1. I hold the degrees of Bachelor of Science in Metallurgical Engineering, Bachelor of Science in Chemical Engineering and Juris Doctor.

2. I am admitted to the practice of law in the State of Michigan and have been a practicing patent attorney continuously for more than 20 years. I am registered to practice before the United States Patent Office, and have been so registered since April 19, 1954.

3. I have examined the disclosure of the fuel tank and fitting invention contained in publicly available materials at the United States Patent Office, relating to Patent 2,779,498, which was granted on January 29, 1957, and which expired on January 28, 1974.

4. I am familiar with the design of the fuel tank and filler neck utilized in the General Motors Corporation, GMC Truck & Coach Division, vehicle identified as Model V4005 cab and chassis.

5. Based upon my experience and training, my study of the Patent, and my familiarity with this model vehicle, the invention described in Patent 2,779,498 was not utilized in the GMC Model V4005 cab and chassis.

Further, affiant saith not.

/s/ Herbert Furman
Herbert Furman

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

Subscribed and sworn to before me this 8th day of April, 1974.

/s/ Frances Kay Frank
Notary Public

FRANCES KAY FRANK
Notary Public, Oakland County,
Mich.
Acting in Wayne County, Mich.
My Commission Expires Mar. 5,
1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x
:
SAME TITLE :72 Civ. 1811 (RLC)
: REPLY AFFIDAVIT
- - - - -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ARNOLD B. ELKIND, being duly sworn, deposes and
says:

I am the attorney for the above named plaintiff
and make this affidavit in reply to the affidavit of
Whitney North Seymour sworn to the 8th day of April,
1974. I have no desire to harass the defendant nor to
engage in discovery procedures which are redundant or
unnecessary.

This action is to recover damages for devastat-
ing personal injuries sustained by the plaintiff when
the cab of a truck in which he was a passenger
suddenly filled with flames. The gasoline tank and
substantially all of the filler tube for the gasoline
tank were located in the cab of the truck and directly
behind the seat. Eyewitness testimony has established
that the entire cab of the truck spontaneously was
filled with flames. This indicates that the cab of

the truck was permeated with a flammable mixture of gasoline vapors and air.

Plaintiff's claim, in essence, is that the design of the truck, and specifically the location of the gasoline tank and the filler tube assembly within the cab of the truck was defective in that it unnecessarily and unreasonably exposed the plaintiff to a hazard, to wit: the presence of gasoline vapors in the cab of the truck. As part of plaintiff's evidence it is relevant to show that the joining of the filler neck assembly to the gasoline tank creates a potential source for the escape of gasoline vapors and that the state of the art in 1960, when this vehicle was designed, demonstrated an awareness of the problem and the technical know-how to eliminate the hazard.

Plaintiff seeks to examine Mr. Cole because he is still with General Motors and because he has stated in a patent application that the system employed in the design of the truck for joining the filler tube to the tank "is not entirely satisfactory as leakages may occur at either or both of the two joints necessarily formed". Mr. Cole's invention claimed an improved sealed universal connection between the

gasoline tank and the filler tube.

Mr. Cole's testimony will therefore bear directly on the very important question of whether or not the design of the cab, with the fuel tank and filler tube assembly inside the cab, made the truck defective, and whether that defect was a proximate cause of the plaintiff's damages.

As discovery developed in this case issues collateral to the underlying design defect problem have become manifest. All of the evidence indicates that no one was smoking, and much discovery effort has been directed toward learning what could have been the source of igniting the gasoline vapors. The source of ignition, however, does not appear at this time to be capable of clear and persuasive evidence. There are, however, a number of potential sources of ignition in the life cycle of a motor vehicle which are well known in the industry and which must be anticipated as a parameter of competent design.

The defendant's opposition to permitting Mr. Cole to be examined may be summarized as follows:

1. I do not seek the examination in good faith but seek solely to harass the defendant.

2. Mr. Cole's testimony would be too remote to the relevant subject matter.
3. I used nasty and intemperate language to Mr. Hempstead during the course of a prior deposition.
4. I do not have the competence to conduct the examination of a technical witness.

Unlike many consumer product cases, the instrumentality involved in this accident was not subject to the control of my client. By the time I was retained in this case the vehicle was no longer available for inspection. The plaintiff retained an attorney shortly after the accident to handle his Workmen's Compensation claim against the plaintiff's employer. Upon information and belief, the only question under the New Jersey statute when an accident occurs in the course of employment is the extent of damage. To the best of my knowledge, the plaintiff's attorney in the Workmen's Compensation case did not hire anyone to investigate the fire other than to have photographs taken of the plaintiff and the truck.

General Motors, as the manufacturer of the truck in question, is therefore the primary source for the relevant information having to do with its

liability. In February of 1973 the defendant served me with a set of some 79 interrogatories, copy of which is annexed hereto and marked as Exhibit 1. [Item 14, Record on Appeal]. On April 23, 1973, through discovery was still at its inception, the plaintiff answered these interrogatories fully and completely. A copy of plaintiff's verified answers to interrogatories, sworn to the 23rd day of April, 1973, is annexed hereto as Exhibit 2. [Item 16, Record on Appeal]. Interrogatories No. 74, 76 and 77, together with the answers thereto, read as follows:

Interrogatory No. 74:

"State the first location or source of the flames which burned the aforesaid truck."

Answer to Interrogatory No. 74:

"In the interior of the cab."

Interrogatory No. 76:

"State precisely and with particularity the facts and circumstances upon which you rely to support your contention in paragraph SEVENTH of your complaint that this accident was 'the fault of the defendant, in that the design of said vehicle created a hazard to the plaintiff by virtue of the position of the gasoline tank in close proximity to the seat in the cab of said truck.' "

Answer to Interrogatory No. 76:

"The fact that flames spontaneously developed in the interior of the cab of the truck without any striking of a match or lighting of a cigarette or any source of ignition other than the truck mechanism."

Interrogatory No. 77:

"State

- a) the manner in which the design of the truck was hazardous, and
- b) how the design should have been changed or improved."

Answer to Interrogatory No. 77

"Plaintiff has no scientific information except that he knows that a gasoline tank and vent should not be in the interior of a truck cab, and except that he knows that the interior of a truck should not burst into flames when the ignition is started."

Since July of 1973 the plaintiff has sought to depose General Motors by the person or persons familiar with the design, development, and production and manufacture of the fuel and ignition systems and gasoline tank assembly of a particular model truck.

On December 19, 1973 the defendant produced Perry C. Dooley. Mr. Dooley, in pertinent part, testified as follows:

"Q. During the years 1960 to 1966, what was your particular job category?

A That would have been in project engineering.

Q Was there a particular project that you were assigned to during those years '60 to '66?

A Yes, sir.

Q What was the project?

A We were assigned component design responsibility and there were several in those years. I am not sure I can state every one, but different components on the vehicle.

Q Did the components include fuel tanks and fuel line system?

A No, sir.

Q What component design responsibilities did you have during that period '60 to '66?

A Well, as I said, I don't know if I can name them all, but it would have been such things as propeller shafts.

Q As what?

A Propeller shafts, frame rails, transmissions. I guess that's all I can recall right at the moment.

Q You say propeller shafts. This has to do with a propeller shaft of a truck?

A You might want to refer to it as a drive-shaft. That may help. I'm not sure.

Q By frame rail, I assume that is a portion of the chassis or the body?

MR. HEMPSTEAD: I object to the form of the question. I permitted you --

MR. ELKIND: I am trying to be short.

Q What is a frame rail?

A I would say it's the basic vertical load carrying member of a completed truck.

Q Did your responsibilities in '60 through '66 take in or include either the ignition system or the fuel line system of trucks?

A No, sir."

Mr. Seymour's affidavit now asserts that Mr. Dooley was familiar with the placement of the gas tank within the vehicle and that he had knowledge of the routing of the gas lines from the gas tank to the engine.

I did not have to examine Mr. Dooley to determine that the gas tank was placed in the cab or to determine from him the routing of the gas line to that point where it entered the engine area. It was clear from my questions that he could not supply any information with respect to the manufacturing procedures, quality control, specifications or standards involved in the gasoline line and fuel tank, since

his projects were the propeller shafts, frame rails and transmissions. The diagrams annexed to the defendant's answers to interrogatories already showed the placement of the gas tank within the vehicle and the routing of the gas lines from the gas tank to the engine.

It was ~~not~~ until the deposition of Mr. Hubbard was taken and the defendant's drawings of the fuel tank assembly were produced for the first time that it became apparent that a potential source of vapors in the cab was the joints between the filler neck assembly and the fuel tank. Even had I known that there were such joints in the filler neck assembly which could be a potential source for gasoline vapors, it is apparent from the deposition of Mr. Dooley that he would not have been possessed of the necessary information except in the most general way.

The point here is that plaintiff is in the process of conducting discovery and that this may, as in the instant case, involve the problem of going from one witness to another within defendant's organization in order to obtain the best evidence and evidence that would be clearly relevant and

admissible.

Pursuant to the Court's memorandum of January 31, 1974, the defendant produced John E. Hubbard. Mr. Hubbard testified that he was a project engineer in the engine design area from August of 1962 to August of 1968, and that prior to that time he was a liaison engineer troubleshooting problems that arose at the interface between the manufacturing of engines and the design thereof. For reasons which will be detailed, Mr. Hubbard did not meet the specifications of the notice and order of the Court.

After the deposition of Mr. Hubbard, which was constructive to a degree, and after the deposition of third party witnesses, and after learning of Mr. Cole's patent it is now apparent that, at least as far as I am concerned, Mr. Cole appears to be the only person in General Motors who has demonstrated a complete understanding of the design problem and who had the solution to the design defect which led to plaintiff's injuries. It is an unusual coincidence that Mr. Cole is now the President of General Motors Corporation.

It should be the ideal of our system of

justice that all parties, regardless of their status in life, stand on an equal footing at the bar of justice. It is an adornment of our law that a sanitation worker from Weehawken, New Jersey, enjoys the privilege of obtaining relevant evidence from the President of General Motors.

Nevertheless, during the course of Mr. Hubbard's deposition I spent almost the first 25 pages of the deposition attempting to identify individuals within the organization of General Motors, other than Mr. Cole, who might have the same knowledge as Mr. Cole regarding the design, manufacturing procedures, standards, and quality control techniques and research and development in the specific area of assembling the gasoline tank. The answers of Mr. Hubbard did not provide any enlightenment. As far as Mr. Hubbard personally was concerned, he testified that he had no duties in connection with the gasoline tank assembly (p. 27, line 4). The problems concerning gasoline tank assembly would not necessarily call to his attention. Mr. Hubbard did not know the name of the engineer who served in the area where the gasoline tanks were assembled (p. 28, lines 15 to 2).

Mr. Hubbard was only able to describe the procedures involved in connecting the filler neck assembly to the gasoline tank in general terms (p. 42, line 10). He did not know of what material the flexible segment of the assembly was made (p. 43). He knew from the drawings that the filler neck was coupled to the assembly by clamps (p. 44) and he testified that both joints were within the body of the cab. He was asked (p. 45, line 17):

"Q Are those joins a source, a known source, of potential leakage in the general assembly?

and his answer was (p.45, lines 19-21):

"A Not to my knowledge. I did not have any problems with this area. Again, I go back to my primary responsibility, what is in the engine plant."

He was asked (p. 46, lines 7-9):

"Q What procedure is followed in order to determine whether or not there is an adequate seal after the two clamps are installed?"

and his answer was (p. 46, line 11):

"A I would have to speculate.

Q I don't want you to speculate, unless you know.

A I don't know of my own knowledge what procedure is involved."

The witness then testified as follows:

Page 47, lines 5-25, page 48, lines 2-18:

"Q So you really have no information to tell me of any tests or any procedures that may be followed, or may have been followed, to determine the reliability of the seals?

A Not of my own knowledge, no.

Q Do you know whether or not there is a performance or was in existence a performance standard for the seals or the two clamps?

MR. HEMPSTEAD: What do you mean by performance standard?

MR. ELKIND: The term is generally understood. It's an objective test to determine the reliability of a particular device or component that can be reproduced at any time.

A I don't know that I know of a performance test myself. I guess I have a hard time figuring out exactly what you mean by it. For example, every engine we build we sell at a rated horsepower. We do not check every engine to see if that horsepower is put out. We do not performance check the engine, if that is what you mean.

Q I am talking about whether there is a performance check to determine whether or not the clamp has accomplished a satisfactory seal, after it's installed.

A Well, there certainly would be, at the time of the original design. It would be performance evaluated at the time of the design, before it was ever released.

Q In other words, before the drawing would be released for manufacture, some one would have made certain or attempted to or would have come to the conclusion that the use of these clamps would accomplish a satisfactory seal?

A In one respect or another, that or similar objects, he would have to have some expertise in determining that, yes."

Page 54, line 9 to page 55, line 2:

"Q Can you tell me, sir, whether or not you are familiar with the procedure in which the clamps are tightened to the recommended degree of torque?

A No. I wouldn't be familiar. I wouldn't be familiar with that, because the procedures may change from time to time and I don't know how this was processed at the time that it was manufactured.

Q I see. Does the clamp contain a screw? Is that how the torque is applied, by tightening a screw?

A That clamp looks like it's a pictorial representation of that -- that would be the way you would tighten that one. That number, though, you would have to look at the drawing to determine exactly how that clamp worked, but whether that is an accurate representation, I am not sure. I don't know at the present time."

Page 58, line 17 to page 59, line 2:

"BY MR. ELKIND:

Q I think I had asked you a question as to whether or not you were aware of any device or test that was being used to determine whether or not the screws that hold these two clamps had in fact been tightened to the recommended degree of torque.

A I don't know of my own knowledge whether those were actually torque checked and inspected, if that is what you are asking me."

Page 59, line 18 to page 60, line 5:

"Q Do you know how they are tightened?
I am asking the question.

A Processing changes from time to time. At this time, at the time it was assembled, those would have to be tightened, and I would assume the process engineer, I can only assume, would use some sort of automatic screw driver to tighten it.

Q You don't know of your own knowledge how it's tightened?

A I don't recall. It was many years ago that I was looking at that particular job, and I'd have to look at the process sheets.?

Page 60, lines 16 to 23:

"Q About the specifications for the clamp assembly, the next item going out is 3763136, and that is called a seal. Am I correct that the entire seal is outside the shell of the body, or is that between the inner portion of the shell and the outer portion of the shell?

A I would have to speculate. I would have to look at the drawing to see it."

The foregoing quotations from the transcript of Mr. Hubbard's deposition demonstrate that in the critical discovery areas Mr. Hubbard was lacking in the requisite legal competence to satisfy the plaintiff's discovery needs.

General Motors claims that Mr. Cole's testimony would be remote from the subject matter. It is the plaintiff's submission that Mr. Cole is uniquely qualified to furnish the most relevant evidence on the triable issues between the parties. Mr. Cole's specialty prior to 1960 in the General Motors organization appears to involve the engineering aspects of the assembly of the fuel tank and its filling device. Obviously he was well informed with regard to the hazard involved in clamping the filler tube to the fuel tank. He mentioned this hazard in his patent application. His patent was assigned to General Motors. Had General Motors utilized the patent that it had acquired from Mr. Cole it would have eliminated the hazard in this case. It should be anticipated that Mr. Cole would be familiar with the cost facts that would have been involved to General Motors in eliminating the clamp hazard. Mr.

Cole's patent was issued on January 29, 1957. The V4000 trucks were manufactured between 1960 and 1966. Mr. Cole must have been privy to the benefit-versus-cost rationale which went into the decision not to include Mr. Cole's invention in the series V4000 trucks. It is evident that, unlike the previous witnesses who were offered to the plaintiff by General Motors, Mr. Cole would be in a singularly excellent position to testify with respect to the crucial design delicts ascribed to General Motors by the plaintiff.

For the second time the defendant seeks to abort normal discovery because I used direct and earthy language in colloquy with my adversary. This time the defendant has underlined my allegedly offensive language.

I have already indicated to the Court that provocation was extreme under the special circumstances leading up to the deposition and that I had no intention to embarrass Mr. Hempstead. I fully recognize that General Motors is a very important client of defendant's counsel and I can assure the Court that regardless of the provocation I will make certain that the colloquy is temperate and professional.

I am of the opinion that defendant's counsel knows that I have a reputation for being an extremely low-keyed and well controlled advocate. It is my sincere opinion that the restatement by the colloquy from the Dooley deposition represents an effort to introduce an element of emotional prejudice in a situation where the defendant knows that it cannot prevail in its position on either the facts or the law.

With regard to my competence to ask technical questions, I have been engaged in the trial of product liability cases for almost 20 years, involving technical and engineering problems. As Chairman of the National Commission on Product Safety from 1968 to 1970 I conducted 22 days of formal hearings involving almost 7000 pages of testimony. Over 225 witnesses appeared at these hearings, during which experience with specific products was reviewed. As a result of these hearings product changes were stimulated in color TV sets, stove insulation, wringer washers and electric hair curlers, and a coffee carafe was redesigned. As a result of the inquiries conducted under my supervision the National Association of Home Builders and the Architectural Aluminum

Manufacturers Association each revised its policies to adopt safety glass; the Gas Appliance Manufacturers Association contracted for research on standards to reduce the hazards of floor furnaces; the Outdoor Power Equipment Institute acknowledged the need for an improved safety standard for power mowers; the Glass Containers Manufacturers Institute undertook to improve both the strength of glass bottles and the quality controls used in their manufacture, and TV manufacturers ordered a crash program to upgrade standards for preventing fires and to implement fireproof designs immediately.

I testified before Committees of both the House and the Senate with regard to product safety problems, and while I am not an engineer by training I do believe that I have had sufficient experience in the product safety field and as a trial lawyer to frame proper questions for an expert witness.

But even assuming that I were lacking in qualifications, it does not seem to me that such a deficit in my professional competence should be used as an argument against granting a deposition which is relevant and clearly authorized by the Federal Rules

of Civil Procedure.

WHEREFORE, your deponent respectfully prays
that the Court order the continued deposition of
General Motors by Edward N. Cole.

/s/ ARNOLD B. ELKIND

Sworn to before me this
16th day of April, 1974

/s/ DOROTHY DRESSEL
Notary Public, State of New York
No. 60-6099400
Qualified in Westcher County
Commission Expires March 30, 1976

RICHARD HUGHES v. GENERAL MOTORS CORPORATION72 Civ. 1811ENDORSEMENT

Plaintiff has filed a motion for an order pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, directing the defendant to submit to a continued deposition by its president, Edward N. Cole, directing the defendant to furnish plaintiff with copies of exhibits identified during defendant's deposition of March 11, 1974, and enlarging plaintiff's time to complete discovery. As I understand defendant's position, it does not oppose furnishing the exhibits identified at the deposition in question, nor does it oppose complying with plaintiff's notice for the production of documents dated March 1, except for Item N. 10. Both parties join in the motion to enlarge the time for completion of pretrial discovery.

Defendant moves pursuant to Rule 37, Fed. R. Civ. P., for an order directing the plaintiff to serve further and more complete answers to defendant's second set of interrogatories, or, in the alternative, pursuant to Rule 26, Fed. R. Civ. P., for an order directing the depositions of all persons who inspected on the plaintiff's behalf the vehicle which is the subject matter of this action.

The motion for the production of exhibits and documents is granted except as to Item No. 10 in plaintiff's notice to produce dated March 1. The time for the completion of the discovery is to be enlarged to a period agreed upon by the parties and approved by the Court. The motion to take the deposition of defendant's president is denied. No good cause exists to require defendant to submit its president for a deposition when it is clear that the information plaintiff wants is available through other employees of defendant, and such employees have been questioned or on plaintiff's request can be questioned. The request borders on harassment and would at best result in a duplication of testimony. See New Sanitary Towel Supply, Inc. v. Consolidated Laundries Corp., 24 F.R.D. 186 (SDNY 1959).

Defendant's motion to require plaintiff to provide further and more complete answers to defendant's interrogatories is granted. If on receipt of answers herein ordered, defendant regards them as insufficient, it may renew its Rule 26 motion.

SO ORDERED.

Dated: New York, New York
June 18, 1974

/s/ ROBERT L. CARTER

ROBERT L. CARTER
U. S. D. J.

☐ None ☐ Very little ☐ Little ☐ Some ☒ Moderate ☐ A great deal

72 Civ. 1811 (RLC)

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO DEFENDANT'S SECOND SET OF INTERROGATORIES

PLEASE TAKE NOTICE, that the following are plaintiff's supplemental answers to defendant's second set of interrogatories, pursuant to Order of June 18, 1974:

* * *

15. Neither plaintiff nor his counsel can identify all documents which will be introduced into evidence until discovery has been completed and various documents requested have been furnished to the plaintiff.

* * *

Yours, etc.

/s/ ARNOLD B. ELKIND
ARNOLD B. ELKIND
Attorney for Plaintiff
122 East 42nd Street
New York, N.Y. 10017

SIMPSON THACHER & BARTLETT, ESQS.
Attorneys for Defendant
One Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X
SAME TITLE : RESPONSE TO
: REQUEST FOR
: PRODUCTION OF
----- -X DOCUMENTS
72 Civ. 1811

S I R S :

PLEASE TAKE NOTICE, that the following is in
response to the Request for Production of Documents
dated March 1, 1974 as modified by the order of Hon.
Robert L. Carter, U.S.D.J.

* * *

2. A search having been made, General Motors
Corporation is unable to locate any documents described
in this item.

* * *

Dated: New York, New York
September 20, 1974

Yours, etc.

SIMPSON THACHER & BARTLETT
Attorneys for Defendant,
General Motors Corporation
Office and P.O. Address
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

TO:

MESSRS. ELKIND, LAMPSON &
SABLE
Attorneys for Plaintiff
Office and P.O. Address
122 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x 72 Civ. 1811 (RLC)
SAME TITLE : UPDATED ANSWERS TO
DEFENDANT'S
----- -x INTERROGATORIES

S I R S :

PLEASE TAKE NOTICE that the following information
updates answers to interrogatories heretofore served
by the plaintiff.

Updating answers to interrogatories dated February
16, 1973:

31. Plaintiff infers that the filler tube assembly was improperly operating at the time of the alleged fire.
32. (a) The joints of the filler tube assembly were defective, unsafe and unfit for use.
- (b) As the result of heat and materials deformation there was no safe and suitable seal at the above described joints.
- (c) The absence of a safe and suitable seal permitted gasoline and/or gasoline fumes to escape from the filler tube assembly into the interspace between the ceiling and the outer wall of the cab and from there into the body of the cab proper.
33. The defendant was given notice of the general vulnerability of a filler tube and tank connected by means of a flexible conduit and clamps by Patent 2779498, dated January 29, 1957, and assigned to the defendant by Edward N. Cole and Edward J. Naudzuis. In said application it was pointed out that leakages may occur at either or both of the two joints necessarily formed.

35. The design of the truck created hazards by placing the filler tube assembly and the gasoline tank within the body of the cab, and by concealing the clamps for the filler tube assembly in the corner of the cab between an extension of the interior roof covering and the outer wall, in which position the clamps could not be reached for necessary tightening, and by leaving an open space underneath the filler tube assembly from which gasoline and gasoline vapors, which are heavier than air, could descend into the body of the cab.
36. Plaintiff has no knowledge as to what was the source of ignition.
37. In addition to the specific design defect heretofore described in answer 35, the plaintiff alleges that General Motors is strictly liable under the law of New Jersey for a defective motor vehicle, and that the flash fire due to the presence of gasoline vapors in the cab of a truck is evidence of a defect.

* * *

The furnishing of the foregoing information also supplements answers to the defendant's second set of interrogatories in the following manner:

* * *

15. In addition to the documents furnished by the defendant in discovery the plaintiff intends to introduce the Cole patent heretofore described.

* * *

Dated: May 8, 1975

Yours, etc.

/s/ARNOLD B. ELKIND

ARNOLD B. ELKIND

Attorney for Plaintiff

122 East 42nd Street

New York, N.Y. 10017

TO:

SIMPSON THACHER & BARTLETT, ESQS.
Attorneys for Defendant
1 Battery Park Plaza
New York, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X
 SAME TITLE : 72 Civ. 1811
 ----- -X REQUEST TO ADMIT

S I R S :

Plaintiff requests defendant, General Motors, within 10 days after service of this request to make the following admission for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That Exhibit A annexed hereto is a genuine copy of an official document on file at the United States Patent Office.

2. That the defendant discontinued the design and manufacture of motor vehicles and trucks with gasoline tanks within the same compartment as that occupied by the driver and passengers.

3. That the defendant has discontinued the manufacture of filler tube assemblies containing the arrangements employed in 1966 GMC dump trucks of V4005 series.

Dated: New York, N.Y.
 May 8, 1975

100a

Yours, etc.

ARNOLD B. ELKIND
Attorney for Plaintiff
Office & P. O. Address
122 East 42nd Street
New York, New York 10017

TO:

SIMPSON THACHER & BARTLETT
Attorneys for Defendant
One Battery Plaza
New York, New York 10004

2,779,493

FUEL TANK AND FITTING

Edward N. Cole, Detroit, and Edward J. Naudzius, Birmingham, Mich., assignors to General Motors Corporation, Detroit, Mich., a corporation of Delaware

Application September 3, 1954, Serial No. 454,110

1 Claim. (Cl. 220-85)

This invention relates to tanks and more particularly to fuel or gas tanks employed in vehicles and to which tube members are attached as fittings to facilitate filling of the tanks.

When fuel tanks are made with filler tubes integral therewith, the devices constitute cumbersome pieces which are difficult to ship and to store. The tubes are generally of considerable length, which factor must be considered in providing sufficient space for the shipment or storage. Handling of the devices is not only difficult because of the tubular protuberances but it must be with care as any undue strain in the junctions between the tubes and the corresponding tanks may cause damage and leakages. In place of making the filler tube and tank as an integral unit, it has sometimes been the practice to make those parts separately and ultimately to connect them in a vehicle by means of a flexible conduit and suitable clamps. This latter expedient is not entirely satisfactory as leakages may occur at either or both of the two joints necessarily formed and the installation in a given vehicle cannot be carried out as expeditiously or as quickly as would be desired.

An object of the invention is the provision of a fuel tank in combination with a tubular filling spout member which is attachable or detachable from the tank in a construction which provides an improved seal joint.

Another object of the invention is the provision of a fuel tank with a tubular filling spout member having a sealed universal connection leading to the tank.

A feature of the invention resides in a fuel tank having an inlet tube member affixed thereto and a filler tube member telescopically arranged with respect to the inlet tube member and sealed thereto by means of an annular ring of resilient and tough plastic material resistant to the chemical action of the fluid to be placed in the tank.

Another feature comprises tubular members cooperatively serving as feed inlet means for a fuel tank and these members being universally movable with respect to each other and provided with stop means for limiting their relative axial movement.

These and other important features of the invention will now be described in detail in the specification and then pointed out more particularly in the appended claim.

In the drawings:

Fig. 1 is an elevational view with portions in section and showing an automobile gasoline tank and an inlet tube member associated therewith, the construction embodying one form of the present invention; and

Fig. 2 is an enlarged view partially in section of a portion of the construction shown in Fig. 1.

In the illustrated apparatus a conventional fuel tank 10 is shown adapted to be mounted in a horizontal position at the rear end of an automobile. In the present instance, however, the upper portion of the tank is provided with an opening 12 defined by a marginal portion 14 which is welded at 16 to an inlet tubular member 18. Tubular member 18 is outwardly flared at its outer end 20 and telescopically receives one end of a tubular filling spout member 22. The other end of the member 22 is provided with a supporting bracket arrangement generally indicated at 24 by means of which the member may be held to a portion 26 of the vehicle body. The filler tube member 22 is curved and extends in an upward direction so that one end is convenient and accessible for the

introduction of fuel, and has secured thereto a removable cap 28.

The end of the tube member 22 that extends within the member 18 is formed with an annular groove 30 for the reception and retention of a sealing ring 32. The member 22 is also provided with an annular ridge or shoulder 34 which constitutes a stop means limiting inward and axial movement thereof with respect to the spout member 18. It will be noted that an annular space 36 is provided between the two members 18 and 22 because of the relative proportions of the latter. A space 37 is also provided between the extreme end of the tube 22 and the member 18.

The sealing ring 32 is made of a plastic material of extreme toughness but which is also fairly soft, flexible, non-porous and unaffected by the fuel as for example, a polymerized tetrafluoro-ethylene known commercially as "Teflon." Other plastics such as polyethylene or vinyl chlorides, fluorides, or mixtures of them may also be used. Neoprene or any rubber of suitable toughness and softness and which is not adversely affected by the fuel or liquid to be handled will be satisfactory.

It will be seen from the above that tanks 10 with the short inlet tube members 18 permanently affixed thereto should present no problems in shipping, storing or installing as they constitute compact units which are easily handled and have no awkward protuberances. It will also be understood that when a given tank 10 has been installed in a vehicle, it is an easy and quickly performed operation to insert a tubular filling spout member 22 with a ring 32 in place thereon so that the members 18 and 22 are brought into telescopic and sealed relation. Alignment of the parts is not critical as the clearances 36 and 37 and the nature of the sealed joint employing the ring 32 permit great latitude in supporting the upper end of the member 22 by the bracket arrangement 24. The tube 22 cannot enter the tube member 18 for too great a distance because of the stop shoulder 34. Movement of the tube 22 in the other direction or away from the tank 10 is prevented by the connection of the bracket 24 with the body portion 26.

We claim:

A fuel tank for use on an automotive vehicle, said tank being provided with an inlet tubular member having an annular flared edge at one free end and another end joined integrally and permanently to an upper side portion of said tank, a curved filling spout member with one end portion arranged remote from said tank and being fitted with a bracket arrangement for support on said vehicle and the other end portion of said spout member being arranged in telescopic relation with said tubular member, said bracket arrangement being adapted to prevent longitudinal movement of said spout member, a groove formed in said other end portion of said spout member, an annular sealing ring of tough flexible plastic material retained in said groove and resiliently pressing outwardly against said tubular member, a stop shoulder formed on said spout member as an annular ridge facing the said flared edge, and a clearance being provided between said members to permit universal movement adequate to compensate for variations in the relative positions of said tank and bracket arrangement.

References Cited in the file of this patent

UNITED STATES PATENTS

2,104,461	Holm	Jan. 4, 1938
2,466,076	Bentley	Apr. 5, 1949
2,516,743	Allin	July 23, 1950
2,684,779	Rafferty	July 27, 1954

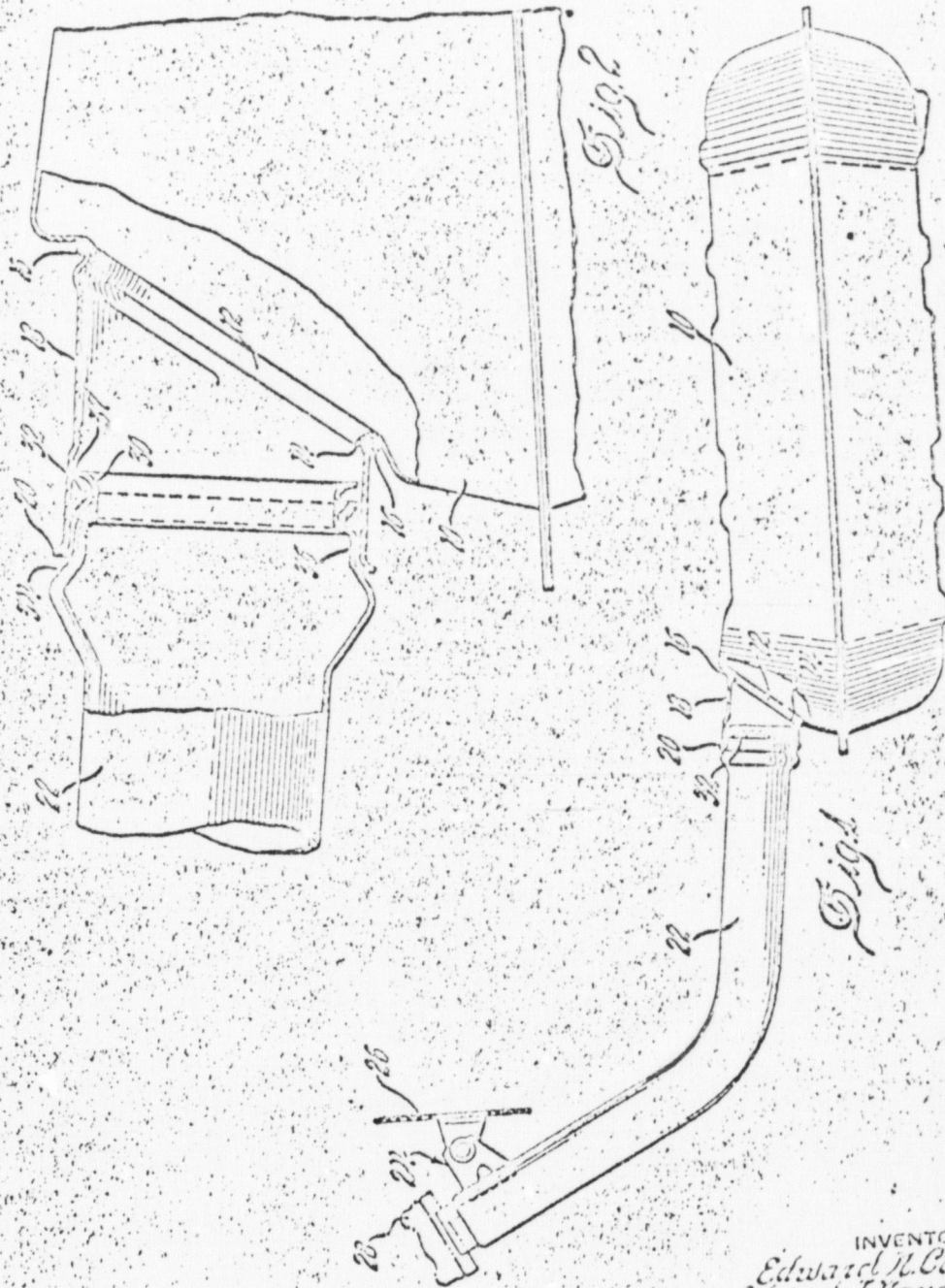
FOREIGN PATENTS

2,734	Great Britain	of 1975
507,026	Great Britain	June 3, 1939

Jan. 29, 1937

E. N. COLE ET AL
 FUEL TANK AND FITTING
 Filed Sept. 3, 1934

2,770,493



INVENTORS
 Edward N. Cole &
 Edward J. Mangrjus
 BY C. F. Little
 ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x
SAME TITLE : 72 Civ. 1811 (RLC)
----- -x REQUEST TO ADMIT

S I R S :

Plaintiff requests defendant, General Motors, within 10 days after service of this request to make the following admission for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

1. That insofar as their fuel and ignition systems are concerned the 1966 GMC truck bearing serial #V4005F42808E and 1966 GMC truck bearing serial #V4005F42814E are of the same design.

Dated: New York, New York
May 9, 1975

Yours, etc.

ARNOLD B. ELKIND
Attorney for Plaintiff
Office & P. O. Address
122 East 42nd Street
New York, New York 10017

TO:

SIMPSON THACHER & BARTLETT
Attorneys for Defendant
One Battery Park Plaza
New York, New York 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SAME TITLE : RESPONSE TO REQUESTS
TO ADMIT
72 Civ. 1811 (RLC)
-----x

S I R :

Defendant General Motors Corporation, as and
for its response to the Requests to Admit, dated
May 8, 1975 and May 9, 1975, heretofore served by
plaintiff, states as follows:

With Respect to the Request to Admit
dated May 8, 1975

1. Admitted, but defendant disputes the rele-
vancy of the document and will object to its admission
in evidence or any reference to it.

2. Admitted, at least as to domestic pro-
duction.

3. Admitted, providing the question assumes
the identical parts contained in the 1966 filler tube
assembly.

With Respect to the Request to Admit,
dated May 9, 1975

1. Although the fuel and ignition systems of

the two trucks were of the same design at the time they were manufactured by General Motors in July of 1966, this fact is irrelevant in connection with the issue of the operating condition of the fuel and ignition systems in Truck No. 2 on August 14, 1971

Dated: New York, New York
May 19, 1975

Yours, etc.

SIMPSON THACHER & BARTLETT
Attorneys for Defendant
Office & P. O. Address
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

TO: ARNOLD B. ELKIND, ESQ.
Attorney for Plaintiff
122 East 42nd Street
New York, New York 10017

106A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 RICHARD HUGHES, :

5 Plaintiff, :

6 vs. :

7 GENERAL MOTORS CORPORATION, :

8 Defendant. :
9 -----X

10 BEFORE: HONORABLE ROBERT L. CARTER, D. J.
11 and a Jury

12 May 19, 1975
13 10 A. M.

14 APPEARANCES:

15 ELKIND & LAIMPSON, ESQ.,

16 Attorneys for Plaintiff

17 ARNOLD B. ELKIND, ESQ.,

18 BENNETT J. WASSERMAN, ESQ., Of Counsel

19 SIMPSON THACHER & BARTLETT, ESQS.,

20 Attorneys for Defendant

21 JAMES J. HAGAN, ESQ.,

22 MICHAEL V. CORRIGAN, ESQ., Of Counsel.

23 EXCERPTS

24 STENOGRAPHER'S MINUTES
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD HUGHES,

Plaintiff,

vs.

72 Civ. 1811

GENERAL MOTORS CORPORATION,

Defendant.

BEFORE: HONORABLE ROBERT L. CARTER, D. J.
and a Jury

May 19, 1975
10 A. M.

APPEARANCES:

ELKIND & LAMPSON, ESQ.,

Attorneys for Plaintiff

ARNOLD B. ELKIND, ESQ.,

BENNETT J. WASSERMAN, ESQ.,

Of Counsel

SIMPSON THACHER & BARTLETT, ESQS.,

Attorneys for Defendant

JAMES J. HAGAN, ESQ.,

MICHAEL V. CORRIGAN, ESQ.,

Of Counsel.

1 1969 2

2 MR. ELKIND: If it please the Court, ladies and
3 gentlemen of the jury, my client in this case is, as you know,
4 Mr. Richard Hughes who was working for the Town of Weehawken
5 as a heavy laborer in the sanitation department. He had
6 previously been employed as a yard master by the Penn
7 Central Railroad, but because of some difficulties with
8 his eyes, macular degeneration, he was unable to qualify
9 for his job as a yard master and was therefore employed by
10 the Town of Weehawken.

11 As part of his duties he would travel around
12 a truck that was assigned to a particular crew. The driver
13 was a man by the name of Brennan who will testify. The other
14 helper was a man by the name of Olert, who will testify.

15 On this Saturday morning in August of 1971 at
16 about 10 o'clock in the morning the truck had begun to run
17 down on gas. The driver was somewhat concerned about whether
18 or not there was sufficient gasoline to finish the duties
19 of the truck for the day, so he pulled into a filling station
20 on Tonnelle Avenue in Jersey City. The driver ordered two
21 dollars worth of gasoline. The gasoline was put into the
22 truck and when the driver turned the ignition key the entire
23 interior of the cab filled with flames, there was a flash
24 fire and all three men were burned.

25 Mr. Hughes, who was sitting in the center of the

1 1969 3

2 truck, was particularly seriously burned with approximately
3 ten admissions to the hospital since the date of that acci-
4 dent. He has been totally disabled to engage in any work
5 since that accident.

6 Now, the claim in this case is against General Motors.
7 General Motors admits that they were the designers and the
8 manufacturers of the particular truck in question. The
9 accident happened in 1971. The truck was a 1966 model GMC
10 and it had an open back body for miscellaneous type of refuse,
11 that would be picked up, such as objects of furniture and
12 so forth.

13 The truck in question had the gasoline tank in the
14 cab of the truck, right inside the cab just behind the seat,
15 and the filler tube, the tube into which the gasoline was
16 poured entered from a point a little bit above the driver's
17 left ear on the side of the truck a few inches from the door
18 and then concealed inside the area between the wall and the
19 roof and the ceiling, which is kind of rounded. There is a
20 filler tube assembly that consists of a rubber hose with
21 fittings on each side at each end of the hose to make a
22 joint.

23 Although this particular truck was not examined by
24 either of the parties, it is the theory of the plaintiff that
25 one, the truck was a hazardous truck, that it was a defective

Page 4

truck; that it had a defective design at the time it left the GM place, but it took five years of useage and heat for this defect to develop so that gasoline would come from the filler hose assembly and the vapors, which we would show are heavier than air filled the truck.

Now, we are not going to offer direct evidence as to what ignited the flammable mixture of gasoline and air which we say was present in the cab. That is not part of our case, but we also say besides saying that the design was defective, we intend to prove to you that the defendant was negligent in the design of the truck because we expect to show you that at the time that this truck was designed, and they started making it, which ran for a period of from 1960 to 1966, there was in existence other devices which were known to give a solid filler tube connection so that this leakage problem from the assembly, from this joint could not occur.

Now, the truck was photographed, the truck involved in the accident was photographed and we have four photographs that we will show you of that particular truck.

The Town of Weehawken at the time they bought the truck in question also bought a sister truck which is from the same series. That sister truck was also used by the Town of Weehawken and quite recently that sister truck, which

1 req 5

2 was designed the same way as the truck that was involved in
3 the fire, was examined by an expert that was selected by me,
4 a professor from Carnegie Mellon Institute and certain parts
5 the filler tube assembly, the gasoline tank, the ignition
6 switch of that car have been taken and will be offered to
7 you as evidence in this case together with an explanation of
8 the function of those parts, both actually in the operation
9 of the truck and theoretically in the bringing about of this
10 accident.

11 In addition we will have for your listening the
12 testimony of the fire chiefs who examined the truck or were
13 in charge of the investigation of the fire.

14 Mr. Hughes, as I say, was seated in the center of
15 the truck and it was a very hot day. The windows were open.
16 Except for wear and tear, which was quite substantial in this
17 case, the truck was pretty well beat up by the five years of
18 useage that it had, but this filler tube assembly that we
19 talking about was concealed and it was not exposed to either
20 the eye or the touch, but the only opening to the filler
21 tube is an opening that's just about large enough to permit
22 the tube to come down inside, to the inside of the cab from
23 the filler spout. Now, the filler spout projects out about
24 an inch or two from the left side of the driver's side of the
25 cab and it's within inches of the doorway and you will see

that graphically because we have taken pictures of the sister truck which was not destroyed and which was available and which was designed to be the same as the original truck.

Now, I understand that in connection with the fitting out of the truck in question by the Town of Weehawken that there was a take-off from the motor to a plow device. They have the same take-off on the sister truck and we have pictures of that and that is brought to your attention because there may be some question as to whether the -- the defendant may contend, I don't know, that the fire originated under the hood and not in the body of the cab and they may then say that the fire was transmitted through the break in the -- it's called the firewall, but actually it's the wall that divides the motor from the body of the cab, but in fact there is only one small opening that is filled by a small wire, as you will see, that in any way affects the integrity of that wall from its original design so that we would say that the truck at the time that it was involved in this tragic event was in a condition that should have been anticipated by the designers and by the manufacturers. In other words, there had been no unusual accident that could affect this problem and no unusual change.

Of course, trucks are meant to be used and we say that there is nothing unusual about the truck being used

1 req 7

2 heavily for a period of say five years and 100,000 miles.

3 this is something that should be anticipated by a manufacturer.

4 Now, we are not claiming -- none of these men were
5 smoking at the time and you may infer that the cause of the
6 fire, the sudden fire in the body of the truck was a faulty
7 ignition switch because the testimony appears to be that all
8 the driver did was to simply turn the ignition which would
9 excite a spark -- if you know mechanics at all -- all he did
10 was turn the ignition switch whereupon the body of the car --
11 the cab of the truck was immediately filled with flames.

12 We are not claiming that General Motors is responsible for
13 the ignition. We are only claiming that they are responsible
14 for the presence of gasoline vapors in the body of the cab.
15 That is the claim here. We claim that that is a defect and
16 we claim that that's because of negligent design. Now, we
17 will prove that from the exhibits, from the sister truck
18 and from expert testimony.

19 This is an action for personal injuries. We have
20 sued for a million dollars, as his Honor told you, and as
21 the case develops you will hear the medical evidence of what
22 this man went through. I am not going to touch upon that
23 now because I think that it would prolong this initial
24 presentation, but what I think that what I have told you now
25 will make your task somewhat easier in listening to the

1 eqs 3

2 witnesses as they testify and I certainly agree with his
3 Honor's statement that what we lawyers say we are going to
4 prove is not the proof, it's just an initial explanation.
5 The proof will be the evidence that we present, the photo-
6 graphs on the exhibits and at the end of the entire case,
7 after all of that evidence is in, then both Mr. Hagan and
8 I will have an opportunity to come back to you and at that
9 time we will be able to discuss the evidence that is in and
10 make arguments as to what you should infer from this piece
11 of evidence and that piece of evidence, and also to justify
12 the amount of damages that we are asking for in this case
13 and how I think you should arrive at that figure.

14 Thank you for your indulgence.

15 - - -

hprf 6

Ollert-direct

26

Q Will you tell the jury in your own words exactly what you recall occurred from the moment that you went into that station?

A We went into the gas station on Tonnelle Avenue.

Q Just talk slowly.

A And my driver ordered two gallons of gas. \$2 worth of gasoline I mean. The man put the gas in the tank. My driver paid him and when he turned the ignition key the entire cabin blew up on us and we all tried to get out of the cab. I punched the window out, couldn't get the door open from the inside so I broke the window with the elbow and reached outside to open it.

I got out. Charlie Brennan jumped out the other side and Richie got out. I grabbed him, and his T shirt was on fire.

Q Were you burned?

A Yes, my hand and part of my face.

Q Did you see the truck after the fire?

A About two weeks later, yes.

Q I show you Plaintiff's Exhibits 1, 2, 3 and 4 for identification and I ask you whether or not those pictures are fair and accurate representations of the way the truck looked after the fire.

A Yes, sir, I would say it was just about like

1 hppd 3 Ollert - Direct 32
2 not the one that was burned.

3 Q What do these pictures show of that truck, with
4 particular reference to 15 and 16?

5 A On 15 it shows the door handle where the gas pump
6 goes in, the gas goes in and the same thing on 16, in a large
7 photo.

8 MR. ELKIND: Subject to connection, your Honor, I
9 offer 14, 15 and 16.

10 MR. HAGAN: I don't know what Mr. Elkind means by
11 subject to connection. This witness apparently cannot
12 identify these photographs. I'm not sure exactly what
13 truck they are photographs of.

14 THE WITNESS: That's Truck No. 1, being photo-
15 graphed there.

16 MR. HAGAN: You can identify it?

17 THE WITNESS: I did, a moment ago.

18 MR. HAGAN: I object on relevancy as to Truck
19 No. 1 unless I know what the purpose of the offer is.

20 THE COURT: I suppose the purpose of the offer is
21 so far as I hear from Mr. Elkind, is to show where the gas
22 pump is located, how the gas was gotten into the truck.

23 Is that correct?

24 MR. ELKIND: Exactly correct, your Honor.

25 MR. HAGAN: We can stipulate how the gas gets in

1 hppd 6

Ollert - Direct

35

2 "wall"?

3 A Yes, sir.

4 Q Was it against that wall that the truck came to a
5 rest?

6 A That's correct.

7 Q Did any period of time elapse from the time that
8 you and the driver and Mr. Hughes got out of the car until
9 the time when the truck started rolling?

10 A I would say about two or three seconds after we
11 got out, it started rolling.

12 Q Did you actually hear the motor before the fire?

13 A The only thing I heard when he turned the key was
14 the explosion.

15 Q How would you describe it?

16 A To me it sounded like a big firecracker going off.

17 Q Did you see where the fire started?

18 A It came out from under the dashboard right into
19 our faces.

20 Q Did you see it that time when you saw the fire
21 coming from under the dashboard and into your face, did you
22 see the fire any place else?

23 A No, sir.

24 Q Before Mr. Brennan turned the ignition key, did
25 you smell anything?

hppd 7

Ollert - Direct

36

A No, sir.

Q Did you see the attendant at the time that the fire started?

A I just handed my driver change.

Q Where was he when the driver turned the ignition?

A He was staying by the gas pumps.

Q Were there any other cars or vehicles in the station at the time?

A A small panel truck with two colored people in them.

Q Were they at the same island as you?

A No. They were about five, ten feet away from us to the right of me on my side of the truck.

Q Were they facing the same direction?

A Facing the same direction, yes.

(Continued on next page)

1 Q When you were sitting in the cab did you ever smell
2 gas fumes in this cab?

3 A No, sir.

4 Q On the day of the accident as you were sitting in
5 the gas station, after the man was pumping the gas just
6 before Mr. Brennan turned the key on did you smell gas
7 fumes in that cab?

8 A No, sir.

9 Q Now, the truck broke down two days earlier you had
10 said, on August 12, and it was out of commission on the 13th.

11 A That's right.

12 Q And then it came back in on Saturday the 14th,
13 the day of the accident, is that correct?

14 A That's right.

15 Q Do you have any recollection other than what you
16 have already told Mr. Elkind as to the cause of the breakdown
17 on the 12th?

18 A The only thing I saw -- the battery was dead as
19 far as I know. It was just the battery as far as I can
20 remember.

21 Q Was it a case where you turned the key and nothing
22 happened?

23 A That's what happened. The truck just went dead.
24 As, say we had a man -- we stopped a pedestrian driver that
25

1 rcpd 6 Ollert - Cross 42

2 Brennan the driver?

3 A That's right.

4 Q Do you remember Mr. Brennan had to stop and call
5 the superintendent -- that was Mr. Storm, wasn't it?

6 A He called the office. Sometimes you get the
7 superintendent and sometimes you get the office manager,
8 Carl.

9 Q And you weren't allowed to buy any gas without
10 getting clearance, is that right?

11 A Without getting clearance, that's right.

12 Q So did get a clearance this morning to buy the
13 gas, is that right?

14 A I guess he did. We bought the gas.

15 Q Am I correct the reason you only bought \$2 worth
16 was it was just enough to finish your run and get you back
17 to your home garage?

18 A That was enough to get us to the city dump and back,
19 yes.

20 Q Did anyone at the time comment to each other that
21 it was unusual that you were running out of gas? Here it
22 is the first time in three years and here you are running
23 out of gas. Did anyone say anything about that, that you
24 recall?

25 A I don't think so, no.

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Q Do you recall being interviewed about this accident after the accident by your superintendent, Mr. Storm?

A Yes, I was.

Q Do you remember that you and Mr. Brennan were interviewed by Mr. Storm?

A That's right.

Q Do you remember telling Mr. Storm that the gas gauge was dropping very fast that morning?

A No, I don't remember.

Q Do you remember hearing --

A That would be the driver's job to tell him. He wouldn't ask me those questions.

Q Do you remember hearing Mr. Brennan saying that?

A No, I don't.

Q Now, I believe you have testified all three of you were smokers, is that correct?

A That's correct.

Q And as you were coming to a gas station I believe you said you were smoking --

A I was smoking and I think Mr. Brennan was smoking.

Q How about Mr. Hughes, do you remember?

A I don't remember whether he was smoking or not.

Q You also stated, if I recall your testimony correctly, that those that were smoking threw their

1 hppd 3

Brennan - Direct

2 gasoline station where you stopped to get gas on the morning
3 of the accident?

4 A Yes, sir, that's it.

5 Q When you pulled up to get gas, were you facing
6 about the way this picture shows on Plaintiff's Exhibit 11?

7 A Yes, sir.

8 Q Had you been smoking that morning?

9 A Well, I smoke, but when I pull in for gas, I never
10 smoke because the gas tank is too close to me.

11 Q Will you tell the jury and his Honor what happened
12 from the time you pulled into the gas station?

13 A Well, as soon as I pulled into the gasoline
14 station, I told the fellow to give me two to three dollars
15 worth of gas anyhow. I knew it would help me out to take
16 me from where I had to go and back again. He filled it out,
17 I hand him the money out the window, I turn on the ignition
18 and all in front of me was flames.

19 Q When you got the gas, was the gas pumps on your
20 left side, just outside where you were sitting?

21 A Yes, sir.

22 Q How long would you say you were at the station
23 before anything happened, before this fire took place?

24 A Just as soon as I turned the key, that's when it
25 happened.

1 hppd 4 Brennan - Direct

2 Q What kind of a day was it?

3 A It was a nice day.

4 Q What about the temperature?

5 A I couldn't recall.

6 Q Where was Mr. Hughes and where was Mr. Ollert at
7 the time this happened?

8 A Mr. Hughes was sitting in the middle, Ollert was
9 on my right-hand side; I was behind the wheel.

10 Q Were you burnt?

11 A Just my arms a little and my face but everything
12 came out all right.

13 Q When you saw the flames fill the cab, did you see
14 flames any place else?

15 A No, just in front of the mirror -- I mean, in front
16 of the glass in front of me. I told them all to get out.

17 Q What did you do?

18 A I jumped out on my side, falling on my knee, ran
19 around the back of the truck. Harry had already been gone
20 down and the other gentleman was still sitting in the middle
21 of the truck. I had to pull him out.

22 Q I beg your pardon?

23 A I pulled him out a little, give him a helping hand
24 to get out.

25 Q When you went to pull him out, did you try to pull

him out from your side or from Ollert's side?

A Like I said, I fell on my knee when I got out and I ran around the other side.

Q On Ollert's side?

A Yes, on Ollert's side.

Q Was the door open or closed?

A I would say the door was open because Harry left. He ran down the street.

Q Was Mr. Hughes on fire at that time when you saw him?

A His shirt was starting to burn and I started to take it off him.

Q Before you saw the flames, did you smell anything?

A No.

Q You smelled nothing unusual?

A Well, whenever you get gas in the truck you always smell the gas because it's right next to me. You can smell the guy putting the gas in.

Q Did Truck No. 2 have an emergency ^{brake} tank?

A Yes, sir.

Q Was it working?

A Yes, sir.

Q Did you have the emergency brake on when you stopped for gas?

1 hppd 6 Brennan - Direct

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2 A The emergency brake was on.

3 Q Did you release the emergency brake before you
4 turned the ignition?

5 A No.

6 Q Did you see the truck move after the fire started?

7 A After the fire started, the truck moved. It took
8 off by its own and went across the highway.

9 Q How long after you turned the ignition -- I with-
10 draw that.

11 How long after you got out of the truck was it
12 that the truck started to move?

13 A It was just a matter of minutes and it took off.

14 Q Do you mean literally minutes or are you indicating
15 a very, very short time?

16 A A very short time.

17 Q Where were you when the truck started to move?

18 A I was standing up against the walls. In fact, I
19 was going into the gasoline station after him.

20 Q After Mr. Hughes?

21 A After Mr. Hughes, yes.

22 Q By the time that the truck started to move, was
23 anything burning on the truck?

24 A No, the whole back was in flames and burning up.

25 Q How about the front?

hpd 7

Brennan - Direct

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2 A The front was burning, too.

3 Q Was the hood closed, the engine hood? Was that
4 closed at the time of the fire?

5 A Yes, it was closed.

6 Q How were you dressed?

7 A Regular old working clothes.

8 Q How was Mr. Hughes dressed?

9 A Mr. Hughes had a pair of pants and a T-shirt on.

10 Q When you say regular old working clothes --

11 A I usually wear those blue pants and blue shirt.

12 I mean, green.

13 Q Green pants and green shirt?

14 A Yes, sir.

15 Q How about Mr. Ollert?

16 A Ollert, the same thing.

17 Q But Hughes was wearing a sweatshirt?

18 A His T-shirt, you know.

19 Q T-shirt?

20 A Yes.

21 MR. ELKIND: You may inquire.

22 MR. HAGAN: Your Honor, may I have this document
23 marked for identification, please?

24 (Defendant's Exhibit A marked for identification.)

25

1
2 Q You didn't comment that it was strange or any-
3 thing?

4 A No.

5 Q Do you remember calling in for permission?

6 A Calling in for permission?

7 Q To get the gas.

8 A No, I didn't call in.

9 Q You didn't?

10 A No. I just went over and got gas.

11 Q Do you know that Mr. Ollert about an hour ago
12 testified that you did go in and call for permission; does
13 that in any way cause you to re-think your testimony?

14 A I called to report the case; that we were stuck
15 out here and we were all in flames.

16 Q I am talking about before the accident now,
17 Mr. Brennan.

18 A Before the accident?

19 Q To call in to get permission to get the gas.

20 A I don't recall doing that, no.

21 Q Just before you hit the key -- what I mean by that
22 is turn the key in the ignition, did you smell gas fumes
23 inside that cab?

24 A No, not at --

25 Q Just answer yes or no. Did you smell gas fumes

inside the cab just before you turned the key, yes or no?

A Yes, you always smell gas.

Q And you smelled it just before you turned the key, is that what you are saying?

A Yes.

Q Now, do you remember testifying in an examination before trial in this case about a year and a half ago?

A Yes, sir.

Q Do you remember it was January 15, 1974 or approximately therein?

A Approximately.

Q Now, let me ask you, sir, if you recall, having been asked these questions and giving these answers at that time a year and a half ago.

MR. HAGAN: Mr. Elkind, I am down at the bottom of Page 14, Line 21. Question - this is the examination by Mr. Hempstead, an attorney in my office.

"Q Would it be behind your left shoulder?

"A No. It's behind my hip over by here.

"Q Your sitting position in the cab?

"A Sitting position, right.

"Q Was there any odor of gasoline in the cab?"

Then there is a question by Mr. Sable who was Mr. Elkind's partner at the time. Mr. Sable said "At what

1 rgpd 7
2 time?"

3 By Mr. Hempstead now.

4 "Q Prior to the fire?

5 "A No, no."

6 Do you remember giving those answers a year and a
7 half ago when you were asked the very same questions, sir?

8 A Yes, I remember that, yes.

9 Q Is your memory today, now, four and a half years
10 after this accident better than it was a year and a half
11 ago on that point?

12 A I don't know.

13 MR. ELKIND: Your Honor, can we approach the side
14 bar for a moment, please? May I have the Court's permission?

15 THE COURT: Let's finish the examination now.

16 Q Mr. Brennan, when you were sitting in the cab and
17 you went to turn the key and you turned the key and the fire
18 started, where is the first place you saw fire?

19 A Right in the window. Right in the glass in front
20 of me.

21 Q You were sitting behind the wheel looking through
22 the windshield?

23 A Right.

24 Q Was it inside the cab or outside the cab?

25 A First it was on the outside by the glass and then

1 it started to come from underneath the dashboard.

2 Q The first time you saw the flames they were outside
3 the cab, isn't that right?

4 A Yes.

5 Q And they were in front of you, isn't that right?

6 A Right.

7 Q And you were paying attention because you were
8 getting ready to move away, weren't you?

9 A I was ready to get out of the truck when I seen
10 the flames.

11 Q Right, but before you had seen the flames you were
12 starting the engine and you were looking straight ahead of
13 you?

14 A That's right.

15 Q And you saw the flames on the outside of the
16 truck?

17 A Right.

18 Q That was the first time you saw the flames, isn't
19 that right?

20 A That's right.

21 Q Wasn't it your impression, sir, that those flames
22 outside the truck that you saw through the windshield came
23 into the cab through the air vents underneath, isn't that
24 what you said?
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A Yes.

Q And that was back at the time you were examined
a year and a half ago?

A Yes.

Q I believe you testified as follows, as if I am
wrong correct me, that you put on the emergency brake, that
you never released the emergency brake and that the truck
rolled into the road after you got out.

A Right.

Q Now, is that your testimony?

A Yes.

Q Did the emergency brake work?

A With constant heat the way that flames was it was
bound to warm them up and let them roll down.

MR. HAGAN: Your Honor, I move to strike the
answer as not responsive.

THE COURT: All right.

Q Now, Mr. Hagan, would you answer my question.
Did the emergency brake work at the time on the day of the
accident?

A Yes, it worked.

Q Are you aware that during his deposition
Mr. Hughes, your fellow passenger, the plaintiff here,
testified that the emergency brake didn't work; are you

5a-2-PM

1 rgrf 4

Brennan-cross

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2 I was going to ask you do you know how many miles were on
3 this truck at the time of the accident. Do you?

4 A No. I couldn't tell you.

5 Q Do you ever remember after this accident talking
6 to various people and giving them your version of the
7 accident, sir?

8 A I talked to my wife, that's about all.

9 Q Is that all you remember talking to, your wife?

10 A Maybe we talked amongst ourselves about it.

11 Q Who is amongst yourselves?

12 A The men in the shop.

13 Q Did you ever tell anyone that the mileage on the
14 truck was at least 100,000 miles?

15 A No. I never said that because I don't even know
16 myself.

17 Q Now, the fact is, Mr. Brennan, isn't it, that
18 on that morning when you were out riding around you started
19 leaking gas from somewhere, isn't that true?

20 A That's what I think.

21 Q Right. And it was the first time you had ever
22 had to get gas and when you came back you reported to your
23 superintendent about it; isn't that right?

24 A Yes. I had to report the accident to him, or the
25 fire, rather.

rgrf 5

Brennan-cross

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Q And who was that superintendent?

A Jay Storm at the time.

Q Is he alive today?

A No, sir.

Q Do you recall, Mr. Brennan, telling Mr. Storm that day, the same day as the accident, August 14th, that you had checked out No. 2 for oil, gas and water and that you noticed that you had a half tank of gas which would be enough to do the route and the round trip to the dump. About a half a mile from Secaucus Road you noticed that the gas gauge was dropping very fast?

A Right.

Q And not wanting to run out of gas you stopped at the Esso station?

A Right.

Q Do you remember telling Mr. Storm that?

A Yes, sir.

Q Tell me what you recall about the gas gauge dropping very fast as you sit here today.

A Well, it dropped so fast that I figured I must get some more gas or either that or the needle is going on the bum and it wasn't registering, the gas.

Q When you pulled into the gas station you must have been concerned at that time, sir, that you might

1
2 have a leak in the gas, isn't that right?

3 A But I didn't see nothing around, no drops or anything
4 on the ground.

5 Q Well, did you look under the truck?

6 A Yes, sure, we looked.

7 Q Oh, well, now, I didn't hear you talking about that
8 when Mr. Elkind was examining you, sir. Have you ever
9 told anybody about this moment that when you were at that
10 gas station you were down under that truck looking for a
11 gas leak?

12 A You don't have to get down. All you have to do is
13 just stand there and look.

14 Q I am asking you did you ever tell anybody before
15 that when you pulled into that gas station you were down
16 looking for a gas leak?

17 A No, I didn't tell anybody, no.

18 Q But you now remember that you did?

19 A I think I did. I think so, yes.

20 Q Yes?

21 A Yes.

22 Q All right. Did you look under the hood?

23 A No.

24 Q You mean you were worried about a gas leak
25 because the needle was dropping; you had never had it happen

1 in five years, you pulled into the gas station and you didn't
2 even lift the hood to look for a leak, is that what you
3 are telling us?
4

5 A That's right, I didn't look in the hood.

6 Q Did you talk to Mr. Hughes or Mr. Ollert about
7 this possible gas leak or did you just keep it to yourself?

8 A I just said that we were running short of gas,
9 that's all.

10 Q You didn't tell them I think we might have a
11 leak the way this needle is dropping?

12 A No.

13 Q Did they think it was funny you out looking under
14 the truck for a gas leak? Did they ask you what you were
15 looking for?

16 A No, they didn't.

17 Q Do you really remember, Mr. Brennan, whether you
18 were down or not or whether you had a leak or not; do you
19 really remember sitting here?

20 A No, I don't remember.

21 Q You don't remember, do you?

22 A No, I don't remember.

23 Q But you do know that you told Mr. Storm about
24 this, don't you?

25 A Yes, I told him.

rgrf 8

Brennan-cross

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Q You really don't remember almost anything about this accident; isn't that right, Mr. Brennan? You didn't even remember the year a little while ago.

A No, I don't know.

Q What?

A No.

Q You don't remember, do you?

A No.

Q You are trying to help your friend, Mr. Hughes, aren't you?

MR. ELKIND: I object to that, your Honor.

Q I mean all these little voluntary comments --

MR. ELKIND: His statement about his friend Mr. Hughes, there is no evidence that Mr. Hughes is his friend or anything of the kind. This witness is here pursuant to a subpoena and I ask the jury to disregard that question.

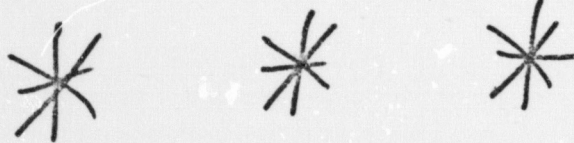
THE COURT: All right, I think that is fair. That comment is to be disregarded. You haven't established that Mr. Hughes is his friend.

Q Let me ask you, Mr. Brennan, I show you a document which has been marked as Government's Exhibit A for identification and I ask you to look at it, sir, and look it over and tell me if you can identify it, please.

jgrf 4

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MR. ELKIND: May I point out to your Honor another

1 jgrf 5

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2 factor which I think is worthwhile putting into the
3 record? I think it is important. That is that the nature
4 of the burns, the location of the burns, the severity of
5 the burns is tied in with the issue of fact as to whether
6 or not this was indeed a flash fire as described by the
7 witnesses. And the injuries are corroborative of the
8 plaintiff's case on liability.

9 THE COURT: Yes. But it does seem to me --
10 you have said that several times -- that that can be
11 brought out in regard to it without going into the full
12 extent of any medical testimony and so forth to indicate
13 that it is a flash burn. I don't see any reason why that
14 couldn't be done.

15 MR. HAGAN: Mr. Hughes can testify about where he
16 was burned.

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(Jury present.)

THE COURT: Call your first witness, Mr. Elkind.

MR. ELKIND: Lieutenant Neebe, please.

MR. HAGAN: Again I would remind Plaintiff's counsel about our agreement on fact witnesses in the courtroom.

W I L L I A M H. N E E B E, called as a witness in behalf of the plaintiff, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELKIND:

Q Lieutenant Neebe, where do you live, sir?

A My home address?

Q Yes.

A Wayne, New Jersey.

Q By whom are you employed?

A City of Jersey City Police Department.

Q What is your position with the City of Jersey City Police Department?

A My rank is lieutenant.

Q How long have you been a lieutenant?

A Eight years.

Q Were you on duty on the morning of August 14, 1971?

A Yes, sir.

2 Q What were your duties as of 10:00 o'clock in the
3 morning?

4 A I was on supervisory patrol in the north section of
5 the City.

6 Q Were you in a patrol car?

7 A Yes, sir.

8 Q Were you alone?

9 A Yes, sir.

10 Q Did there come a time when you were on Tonnelle
11 Avenue in the vicinity of the Esso station?

12 A Yes, sir.

13 Q Where were you driving -- in what direction?

14 A Tonnelle Avenue is designated as U.S. Route 1 and
15 9. I was driving south on U.S. Route 1 and 9, Tonnelle
16 Avenue.

17 Q As you drive south is the Esso station on your
18 right or on your left?

19 A On the right. That would be on the west side of
20 Tonnelle Avenue. Tonnelle Avenue runs north and south.

21 Q Will you please tell the jury and his Honor what
22 you said that morning at about 10:00 o'clock?

23 A Yes, sir. A truck mostly in the Esso station.
24 What attracted my attention to it was smoke and flame coming
25 from the cab and men jumping from the cab. I immediately

mcpd 4

Neebe - Direct

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Does Plaintiff's Exhibit 11 include the area where the truck was burning?

A Yes, sir.

Q Can you indicate where the truck was located at the time that you saw it and saw the men getting out?

A To the best of my recollection, it was in close proximity to the pumps, because when I saw the fire, smoke, flames, when I got out of my vehicle I called for assistance to push the truck away from the pumps so that the conflagration didn't spread to the pumps, the gasoline pumps. That is why it went out onto the road.

Q Did you see people pushing the truck out into the road?

A Yes.

Q Did you see flames in any other part of the truck except the interior of the cab?

MR. HAGAN: Objection to the form of the question, unless there is some indication that the hood was open so that he could see into the engine. How could he know whether there is fire in the engine 25 feet away with the hood closed?

THE COURT: The objection is sustained.

Q Can you describe in more particularity the flames that you observed?

1 mcpd 5

Neebe - Direct

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2 A Yes, primarily black, thick black smoke coming from
3 the vicinity of the cab and partially under the hood, flames
4 at the base of the smoke from the cab.

5 Q Was there any fire at that time in the material on
6 the back of the truck, Lieutenant?

7 A I did not observe any.

8 Q Did you continue to remain at the scene until a
9 fire apparatus came?

10 A Yes, sir.

11 Q Do you know or can you identify the people who are
12 in charge of the firefighting apparatus?

13 THE COURT What difference does that make?
14 I understand you have those people coming in. What
15 difference does it make if he can identify them or not?

16 MR. ELKIND: I will withdraw the question.

17 Q How long a period of time elapsed from the time
18 that you arrived until the time that the fire apparatus
19 came?

20 A A very short interval, very short.

21 Q Can you tell us how far the firehouse is from the
22 scene of this fire?

23 MR. HAGAN: I object to it. That is irrelevant.

24 THE COURT: The objection is sustained.

25 MR. ELKIND: You may inquire, Mr. Hagan.

CROSS-EXAMINATION

BY MR. HAGAN:

Q Officer Neebe, when you saw the man getting out of the cab, where was the truck sitting, sir?

A On the gas station proper, on the apron by the pump.

Q Next to the pump?

A By the pump.

Q And do I understand that several men, including yourself, pushed the truck from the area and pushed it out into the road; is that how it got there?

A Yes, to the best of my recollection. I do remember there were people in the gas station. Whether they were mechanics, helpers or what, that was my first thought, to get it away from the pump.

Q You all just pushed it out there into the road?

A Yes, pushed it.

MR. HAGAN: No other questions.

MR. ELKIND: Thank you, Lieutenant.

(Witness excused.)

THE COURT: Call your next witness.

RAYMOND PRICE, called as a witness in behalf of the plaintiff, and having been duly sworn, testified as follows:

jgpd 11

Hughes - Direct

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1 long sleeves. I don't know why, on such a day.

2 Q What kind of work did you do that morning and where
3 did you go?

4 A We started out our normal route, from Highwood
5 Terrace up to 51st Street and worked our way back.

6 Q And did there come a time when you had any
7 conversation with respect to gasoline?

8 A Not really, sir, no.

9 Q What did happen?

10 A When --

11 Q Before 10:00 o'clock, before you went into the
12 station for gas. What did occur on the truck?

13 A Brennan just happened to mention that he didn't
14 think he had enough gas to get back into the dump and back
15 to Weehauken. In his judgment, he decided to stop, rather
16 to be safe than sorry.

17 Q Do you know where this decision was made, where you
18 were when the decision was made to stop for gas?

19 A I believe we were headed towards Secaucus Road,
20 coming through Secaucus Road.

21 Q Do you know about how many miles you had driven?

22 A Roughly six to eight miles.

23 Q There came a time when the truck pulled into an
24 Esso station on Tonnelle Avenue, is that right?
25

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2 A Yes, sir.

3 Q I show you Plaintiff's Exhibit 11 and I ask you
4 whether that picture fairly and accurately represents the
5 station.6 A Yes, sir We were on the outside pumps. These
7 pumps were to the northern end of the station.8 Q Were you at the position that is shown by the
9 red outline, red arrow?

10 A Yes, right here, sir (indicating).

11 Q Facing the same way as the arrow shows?

12 A Yes, sir.

13 Q Now just tell his Honor and the jury what occurred
14 from the time that you pulled up to the pump.15 A Well, when we pulled up to the pump, the attendant
16 had been inside. He come out and he walked over to the
17 driver's side and Brennan said, "Give me two bucks worth of
18 the cheapest gas you got."19 The gentleman put the nozzle in our gas tank and
20 we got the gas and he give the attendant a \$10 bill. A few
21 words were exchanged back and forth about phoney tens being
22 passed around, and he went inside to get the change.23 When he came back with the change, Brennan had to
24 take out his wallet again, insert the bills back into his
25 billfold and put the wallet back, and he adjusted himself

-3-AM

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and bent over to turn the switch, and just as he turned the ignition switch the whole cab blew up in flames.

Q Now, at that time, where were you sitting?

A In the middle, between Mr. Brennan and Mr. Ollert.

Q Were the windows of the cab open or closed?

A Open, sir.

Q On both sides?

A Yes, sir.

Q Had you ever been in that station before?

A No, sir.

(Continued on Page 199)

Q How long a period of time, if any, elapsed from between the time that the key was turned and the time that this whoosh of fire came?

A It was instantaneous.

Q Did you see fire any place other than in the cab?

MR. FAGAN: I object to the form, your Honor, unless he establishes that he was in the position to see fire somewhere else than in the cab. He was sitting in the cab.

THE COURT: He can answer the question.

A Not until I actually got out of the cab, sir.

Q Where in the cab was the fire?

A The whole cab was engulfed in flames.

Q From floor to ceiling?

A Yes, sir.

Q From wall to wall?

A Yes, sir.

Q You were facing looking forward at the time; is that right?

A Yes, it happened (indicating) --

Q You were looking forward at the time?

A Yes.

Q The windshield wiper was in front of you?

A Yes.

2 Q Did you see any flames in front of the windshield?

3 A No, sir, none at the time, no, sir.

4 Q I beg your pardon?

5 A No, sir.

6 Q What was the condition of the inside of that cab?

7 MR. HAGAN: I object to the form of the question.

8 THE COURT: The objection is sustained. I don't
9 understand the question.

10 A I don't understand what you actually mean, sir.
11 Could you rephrase it?

12 Q In the area where you were sitting, was there any-
13 thing between your legs?

14 A Well --

15 Q Any part of the truck?

16 A The fork levers that open the body lift are
17 between the shift lever and my legs. When the three of us
18 get into the cab either I got to put my foot over or else
19 put it in between.

20 Q So on this particular occasion is it your
21 recollection that you were straddled between the gear lever
22 or --

23 A The tailgate levers.

24 Q The trunk lever. That is to lift the truck up?

25 A Yes, sir.

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Q That is sort of an attachment that goes down to the floor?

A Yes, sir.

Q Are there one or two of such levers?

A There is just two levers.

Q What are they; what are their purpose?

A Just handles to disengage the clutch and open them up and the tailgate raises.

Q You say the tailgate. Do you mean the back of the truck?

A Yes, the body of the truck.

Q Incidentally, you were not a licensed chauffeur of the State of New Jersey, were you?

A Yes, I was at the time.

Q Did you ever drive either Truck 1 or 2?

A No, sir.

Q What kind of a seat were you seated on?

A Well, the regular seat that was in the truck. All the coil springs protruding and the seat was pretty well down, so we were sitting on a cushion to give us a little more leverage and comfort.

Q Were there any tools in the truck?

A A lug wrench and a steel bar and possibly a set of pliers.

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Q Where were they kept?

A The pliers were kept in the glove compartment and the rest underneath the seat.

Q Are there controls for the windows and for the doors on the inside of that cab?

A Only on the driver's side, sir.

Q What about the handles on the other side, the passenger side?

A They were both missing, window and door handle.

Q Now, till the time that you saw the flame fill the cab, had the cab moved?

A No, sir.

Q Did you hear any sound of the motor?

A It was such a tremendous thing, I don't recall.

Q Did you hear the motor at all?

A That I couldn't tell you, sir, because as soon as he had turned the key simultaneously the flames came and we were all in a panic.

Q Do you recall what happened when you first saw the flames?

A Yes, I threw my hands up to my face while waiting for Mr. Ollert to get out. I couldn't get out of the driver's side because I was wedged in between these fork levers and the gearshift. I had to wait for Mr. Ollert to

1 mcpd 5
2 get out the other side so I could get out.

3 Q What did Mr. Brennan do? Did you see what he
4 did?

5 A All he had to do was slip his hand down on the
6 handle and slide out and he ran to the back of the lot.

7 Q Did you see what Mr. Ollert did?

8 A Mr. Ollert got out himself and -- he didn't do it
9 intentionally, but the door was pushed back against me, and
10 he ran to the back.

11 Q And did you try to get out the door on Ollert's
12 side?

13 A I got out of the door on Ollert's side, yes, sir.

14 Q Was it open or closed?

15 A It was closed at the time, sir.

16 Q And Ollert was out of the cab?

17 A Yes.

18 Q And what did you do?

19 A When I first got out of the cab, the first thing
20 I did was run to the canteen in the gas station.

21 Q No. What did you do when you saw the door was
22 closed and you were still in the flames?

23 A I was bending out to put my hand out the door to
24 push down the button, the handle, to get out myself.

25 Q Is that the way you got out?

1 A Yes, sir.

2 Q Did Mr. Ollert then help you?

3 A No one helped me, sir.

4 Q What happened next?

5 A When I got out of the cab of the truck the first
6 thing I did was run into the anteen. I took a cold can
7 of soda out of the machine and began drinking it right down
8 and then I asked the attendant if he had a flame, fire-
9 extinguisher. He had one of these small foamite things
10 with a big collar on it, but when he tried to spray it the
11 heat was too intense so that it was of no value to him.
12

13 Q Did you come back to the truck while it was on
14 fire?

15 A No, sir.

16 Q Did you see anybody using a fire extinguisher on
17 the truck?

18 A No, sir.

19 Q What was the next thing that happened?

20 A Within minutes or seconds they had Tonnelle Avenue
21 closed off, the police department, and the fire engines were
22 arriving on the scene. By the way, after -- before that the
23 truck itself had rolled out into Tonnelle Avenue and there
24 is a concrete divider that --

25 Q Did you see anybody pushing the truck out?

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A No, sir, to the best of my knowledge, no, sir.

Q Now, when you got out of the truck was your clothing on fire?

A Yes, my shirt was burned on the left-hand side here and I had to put it out, and my hair was burned.

Q Did anybody help you put out the fire on your body?

A No, just the shirt was burned and I just kept slapping that with my hand and it went out.

Q Did you feel any pain at that time?

A No, sir.

Q What was the next thing that happened?

A Well --

Q After they closed off Tonnelles Avenue.

A The fire engines arrived and within seconds of the fire engines arriving an ambulance arrived and they had a woman attendant to -- I don't know whether she is a doctor attendant on an ambulance or an intern or what and the cop told us to go in the ambulance and that any reports he would get later, and we were taken directly to the Medical Center Emergency Room.

Q What did they do for you in the Jersey City Medical Center emergency room?

MR. HAGAN: May we approach the side bar?

T6-2-AM

has to do with burns.

(Plaintiff's Exhibit 28 received in evidence.)

Q Generally speaking, will you tell the jury what parts of your body were burned and required medical treatment and surgical treatment?

A Well, almost all my body was burned but the upper left extremity and the whole right hand halfway up from the wrist were severely burned and this left ear had to be completely reconstructed.

Q Any other parts of your face?

A My face he don't want to graft on. He has been giving me medication to clear it up.

Q I show you Plaintiff's Exhibit 41 for identification. How long before the fire was this picture taken?

A Maybe a year at the most.

Q Does this picture show the way your face looked before the fire?

A Yes. It was taken by the director of Lincoln Center. He is the photographer for Lincoln Center, for the Metropolitan Opera and so forth.

MR. ELKIND: I offer this.

Any objection?

MR. HAGAN: No objection.

(Plaintiff's Exhibit 41 received in evidence.)

1 was turning the key he got no response at all, that is, he
2 didn't even get the whir you sometimes get?

3
4 A Right, sir.

5 Q Now, on August 14th, at the time of the accident,
6 just before the fire in the truck, am I correct that you were
7 sitting in the middle and those two -- did you call them
8 fork levers? Is that a correct term, fork lever?

9 A I have no idea. You represent General Motors.
10 Maybe you can tell me.

11 THE COURT: Mr. Hughes, you answer the question.

12 THE WITNESS: There are two levers, as far as I
13 am concerned.

14 THE COURT: Answer the questions now, Mr.
15 Hughes. Relax and answer the questions. Don't argue with
16 counsel.

17 THE WITNESS: Will you please repeat the question,
18 please?

19 Q Did you call these two rods that look like they are
20 in the middle of the truck -- did you call them fork levers?

21 A I might have.

22 Q I thought that's what you said earlier and I just
23 wondered whether I had misheard you or whether that was the
24 term you used. Did you use that term?

25 A I might have. I'm not sure.

1 2 pm jgrf 1

Hughes-direct

2 MR. HAGAN: Your Honor, may we approach the side
3 bar, please.

4 (At the side bar.)

5 MR. HAGAN: Your Honor, what we are getting into
6 here, we have pictures taken in the hospital, I don't know,
7 a couple of days later.

8 We are going to have testimony from the doctors
9 as to what the burns were and from the plaintiff, and the
10 probative value of these pictures as compared to their
11 prejudicial effect is really extreme, and in a case of this
12 kind the jury having to look at those pictures for liability
13 in establishing a case it seems to me, whatever value they
14 have, is heavily outweighed.

15 THE COURT: I'll tell you what I'll do. You have
16 them identified and then I'll listen to the testimony of
17 the doctor. If I reach a conclusion that it is not adequately
18 described, I'll let them in. But you can have them
19 identified now without showing them.

20 MR. ELKIND: I would like the record to show that
21 the four pictures that have been discussed are Plaintiff's
22 Exhibits 46, 47, 48 and 49 for identification.

23 (In open court.)

24 BY MR. ELKIND:

25 Q Now, Mr. Hughes, after you were discharged on

1 jgrf 16 Hughes-cross 260
2 Q All right. Do you know the two rods I'm talking
3 about, the ones that operate the dump truck behind?

4 A Yes.

5 Q All right. Where were they with respect to your
6 legs, just before the accident? Do you recall?

7 A I was right between them.

8 Q The rods were between you?

9 A Yes. They and the shift lever had me blocked.

10 Q Okay. Now, where was the shift lever?

11 A About two inches, three inches opposite these devices
12 that open the tailgate and raise them.

13 Q I mean from where you were sitting. You were
14 sitting looking out. Was the shift lever on your left?

15 A On my left from the driver's side.

16 Q All I'm interested in is from you, now. On your
17 left, the shift lever, is that right?

18 A Yes.

19 Q And where was the fork lever? Was it on the right
20 side of your right knee?

21 A No. I was in between the shift levers and them
22 two levers.

23 Q I'm sorry. I'm not understanding you. Am I correct
24 first of all, the shift lever is here and then the fork
25 levers are to the right of it, is that correct?

jgrf 17

Hughes-cross

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1
2 A Yes, sir.

3 Q Now, your two knees, were they between the shift
4 lever and the fork levers or what?

5 A One knee was between them.

6 Q Was that the left knee?

7 A Yes.

8 Q All right. The left knee was between the shift
9 lever and the fork lever?

10 A As far as I can tell.

11 Q And the right knee was on the other side of the
12 fork lever?

13 A Right.

14 Q So basically the fork lever was between your two
15 knees, is that correct?

16 If you don't remember, tell me.

17 A I'm not basically that sure, but I believe that's
18 what it was.

19 Q Okay.

20 A It is so long ago, and the doctors in the
21 hospital told me try and put it out of your mind. So
22 it is rough trying to remember.

23 Q You remembered it pretty well when Mr. Elkind was
24 examining you a little while ago, didn't you?

25 MR. ELKIND: I object to the form of that

1 jgrf 18 Hughes-cross

2 question as being argumentative.

3 MR. HAGAN: All right.

4 THE COURT: All right. Let's proceed.

5 Q Mr. Hughes, just before Mr. Brennan turned the
6 starter, as you sit here today, sir, do you remember
7 smelling gas fumes in that truck?

8 You are in a gas station. Naturally.

9 Q Please, Mr. Hughes. Just answer the question.
10 Do you know what the question is? I'll be glad to ask the
11 reporter, with his Honor's permission, to read it back.

12 Please listen to the question and give a response.

13 A Right.

14 Q Do you know what the question was?

15 A Yes, I smelled gas fumes.

16 Q You did.

17 A Yes, sir.

18 Q You are sure of that?

19 A Definitely.

20 Q I'm going to read again from your deposition.

21 By the way, have you read this recently?

22 A Yes.

23 Q How recently?

24 A Last couple of days.

25 Q I can't hear you.

A Last couple of days.

Q I'm reading at page 49, starting at line 16 of your deposition in this action, which was taken on December 18, 73:

"Q When the gas station attendant handed him the change, was the gas station attendant smoking?

"A No.

"Q During this interim did anybody light a cigarette?

"A No, sir.

"Q Did you smell gas fumes?

"A To be perfectly frank, no. It was just hot.

"Q And you were sitting in a gas station, every time you filled up you would smell gas fumes, but this time you just don't recall smelling the gas fumes.

"A I guess not. I really couldn't recall, to be honest with you."

Now, do you remember being asked those questions and giving those answers?

MR. ELKIND: Your Honor, may I have permission to continue reading from the point where counsel stopped reading?

Line 9. Lines 7, 8 and 9.

THE COURT: No.

MR. ELKIND: I beg your pardon, your Honor?

1
2 THE COURT: No. That is denied. The request
3 is denied.

4 MR. ELKIND: Let the record show that I wanted
5 to read from page 50, line 7.

6 BY MR. HAGAN:

7 Q Mr. Hughes, after this deposition was taken, do
8 you remember there came a time when it was sent to you or
9 given to you by your counsel and you were asked to review
10 it? Do you remember that?

11 A Yes.

12 Q And do you remember there were changes made to the
13 transcript of parts where you thought you had not been
14 properly quoted and there were four pages of changes made and
15 you signed it at the end and swore to it before a notary
16 public? Do you remember that?

17 A Yes, I remember correcting it.

18 Q Did you change the questions and answers I just
19 read to you a moment ago? Did you make those changes when
20 you were correcting this transcript? And if you don't
21 remember, I'll be glad to give it to you and let you look
22 at it. Did you change them, sir?

23 A I don't recall, to be perfectly frank with you.

24 THE COURT: I think you have to keep your voice up,
25 Mr. Hughes.

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Hughes-cross

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MR. HUGHES: I got a sore throat, sir.

Q Will you accept my statement that there were no changes made to page 49, in that area I just read to you, sir? Because otherwise I'll be glad to give it to you and let you look at it.

A I'll accept your word.

MR. ELKIND: There were no changes.

Q Now, the emergency brake, among the other things we have earlier discussed, the emergency brake was busted on this truck at that time, wasn't it?

A I couldn't tell you for sure. I had nothing to do with maintenance of the vehicle. I believe it was, but I'm not expert.

Q Again reading from your deposition, Mr. Hughes, in December of '73, page 52, line 7.:

"Q Did he release the brake or was the brake ever released? Did he ever set the hand brake?

"A No, because the truck eventually rolled out in the middle of Tonnelle Avenue.

"Q So you recall that Mr. Brennan did not set --

"A I don't think it worked, to be perfectly frank with you.

"Q You don't recall the hand brake working?

"A No, sir."

1 All right. See if the jury is here.

2
3 MR. HAGAN: Before you bring in the jury, your
4 Honor, I have an application.

5 I know we are going to reach it this morning,
6 I gather we are going to reach it this morning.

7 THE COURT: I would like for you to get Mr. Wasserman
8 or someone to attempt to get Dr. Tobias down here this
9 afternoon, Mr. Elkind. I would appreciate that.

10 All right.

11 MR. HAGAN: Your Honor, I anticipate that sometime
12 this morning, while Dr. Rothfleisch is on the stand, we are
13 going to get into the question of these pictures that were
14 marked for identification yesterday, and perhaps some other
15 pictures in addition to that which I have never seen.

16 THE COURT: I thought I had ruled on that.

17 MR. HAGAN: You ruled, your Honor, that they were
18 not being admitted yesterday but --

19 THE COURT: I ruled that they were not being
20 admitted, and after the doctor described the wounds and
21 the conditions and so forth, on the basis of whether or not
22 his description was adequate, I would make a final decision.

23 So that they are not automatically being admitted.
24 I am going to evaluate the doctor's testimony. It seems
25 to me that-- I agree with you-- these things could be more

1 prejudicial than they would be descriptive of the plaintiff's
2 injuries.
3

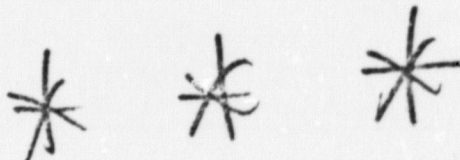
4 If there is some gap, if the doctor isn't describ-
5 ing them sufficiently, then I think Mr. Elkind can make his
6 application and I of course will consider it. But I see no
7 reason why the extent of the injuries, how serious they are
8 and so forth, cannot be described by the doctor fully and
9 adequately for the jury's understanding without having to
10 look at those pictures.

11 MR. HAGAN: If there does come a point when the
12 application is made again and your Honor is considering it,
13 we do have a memorandum of law on the point. I would ask
14 to submit it to your Honor if it comes up again.

15 THE COURT: All right. I'm sure you should and I'm
16 sure it is going to come up.

17 MR. HAGAN: Then would your Honor like to have it
18 now?

19 THE COURT: All right.
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for plastic surgery at Jersey City Medical Center at that time.

Q And were you called in connection with this admission?

A Yes.

Q Now, does the hospital record indicate when you first saw Mr. Hughes?

A Well, I must have seen him on the day of admission, because there is a date 8/14/71 and my name is signed at the bottom of the history and physical performed by the resident staff.

Q Can you, by looking at the history entry, summarize what the history was?

A Well, the history states that he had first and second degree burns of the face, neck, back, both arms and both knees.

Q And was a physical examination then conducted and set forth by way of a report on the admission sheet?

A Yes.

Q And what does that examination disclose as far as positive findings?

A Well, positive findings were mainly confined to the areas of burn, areas of first and second degree and possible third degree burns, but it does not so

1
2 state here.

3 Q Will you tell the jury, please, the difference
4 between first degree, second degree and third degree burns?

5 A A first degree burn is usually an area of erythema,
6 redness, with tenderness and swelling.

7 A second degree burn usually develops blisters
8 in addition to the redness and swelling. And in these
9 blisters there is protein exudate, the exudate really
10 coming from the plasma of the blood. And one of the body's
11 reactions when the integrity of the skin is compromised
12 as to pour out plasma and electrolytes, which are sodium
13 ions and potassium ions, into the burn wound fluid. And
14 as a result of that, the area blisters and swells.

15 And a third degree burn is when such
16 sever injuries are sustained to the skin that the skin is
17 damaged completely beyond repair, the loss of skin appendages,
18 hair, the nerve endings in the skin are damage, and
19 irreparably damaged, where there is no longer any sensation
20 of pain. The skin itself becomes either leathery, either
21 black or severely white. Sometimes, depending on the
22 area of burn, it can cause severe constriction, and if it
23 is on the chest it can cause such severe restrictions that
24 breathing can be compromised.

25 Q On the original admission sheet, what parts of

1 Mr. Hughes' body were involved with first degree burns?

2 A I don't think we specifically stated what areas
3 were first degree burns. Some mention is first and second
4 degree burns on face, but first degree on the upper chest and
5 first degree burns and second degree burns on both upper
6 extremities.
7

8 I would like to make a point, which is very
9 important to consider, that initial estimation of extent
10 of burn is oftentimes misleading because a day later or
11 two days later the burn is a lot worse than when you started
12 out, and what looks like first and second degree burn
13 can be very easily in a day or two a third degree burn.
14

15 So that the initial estimate is really a guide to
16 us in terms of our treatment plan rather than an absolute
17 sacrosanct statement as to what the extent of the burn is.

18 I have a note here on the chart --

19 Q What is the date of the note?

20 A That is 8/15/71.

21 Q Is that your first note in the chart?

22 A That was my first note. The other notes were just
23 countersigned notes of the resident staff. And I had
24 made the statement as follows:

25 "39 year old sustained burns of face, neck, arms and
hands yesterday in the a.m., supposedly occurring in the

2 cab of the truck he was in. There is obvious superficial
3 second degree burns of face, arms and possible deep second degree
4 of the dorsum of hands. Plan is for sulfamylon application" --
5 I'll explain that for the jury -- "elevation of hands,
6 debridement of burn wounds" --

7 MR. HAGAN: I ask that the witness be instructed
8 not to read from the hospital record, that he respond to
9 questions by Mr. Elkind as to what he observed and what
10 treatment he gave rather than just reading out of the hos-
11 pital record.

12 THE COURT: I think that's right, Doctor. You
13 are here to respond to questions by counsel and that's
14 what we want to hear.

15 THE WITNESS: May I just explain to the jury about
16 sulfamylon so that they know what it means.

17 Q I'll ask you.

18 There are a few terms that you used, Doctor,
19 that I would like you to explain to the jury. First you
20 used the term -- you said that you were going to debride
21 the wounds?

22 A Yes.

23 Q What does debridement mean?

24 A When an injury is sustained such as a burn, the loose
25 tissue that occurs as a result of the blistering is a nidus

for infection unless removed, a site for infection.

Unless this material is removed, it serves as an impotence to the healing of the wound. So we debride it, which means simply surgically to remove it and to clean the wound up sufficiently so that we can get healing to begin.

Q And what kind of a dressing did you say that you ordered applied?

A We used -- at that time we were using sulfamylon acetate cream. Sulfamylon acetate cream is a topical antibiotic cream which serves to reduce the germ count, the bacterial count on the burn surface. It also does, in effect, retard some epithelialization, that means the new skin growing in. But its major function is to prevent infection developing in the burn wound, which many times can be very severe, can be life threatening.

Q Doctor, that note is dated the 15th, is that correct?

A Right.

Q That was a Sunday?

A I can't --

Q The 14th was a Saturday?

A If the 14th was a Saturday, obviously the 15th was a Sunday.

jgrf 18

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Q And do you have a recollection that would permit you to describe the portions of Mr. Hughes' body that were involved with first and second degree burns as described in that first note?

A Well, off the top of my head I really couldn't remember exactly. I would have to see a photograph which would enable me to better describe the areas involved.

Q Were photographs taken on that day, on Sunday, the 15th?

A Yes.

Q Were they taken by you, Doctor?

A I had taken some and other people had taken some.

Q Can you look at these pictures, Doctor, Exhibits 46, 47, 48 and 49? I ask you whether you can identify those pictures as having been taken on or about August 15, 1971 at the Jersey City Medical Center.

A I would say so.

1 Q Dr. Rothfleisch, looking at those pictures, does
2 that refresh your recollection as to the areas of first
3 and second degree burns as originally reported by you in
4 your note of the 15th?

5 A Yes.

6 Q Would you describe, as best you can, having
7 refreshed your recollection, what parts of his body were
8 involved and what the appearance was of each part?

9 A The major areas of involvement were specifically
10 the face and ears bilaterally.

11 Q By bilaterally you mean both ears?

12 A Both ears. This is a term we use. If we
13 refer to one ear we just say one ear, but when we refer to
14 both ears we say bilaterally. The both hands, dorsums of
15 the hand, that is the top of the hand in contrast to the
16 palmar surface of the hand, the forearm and upper arm on
17 his left arm and the dorsum on his right hand, forearm up
18 to the elbow, and a patchy area on the biceps area, which
19 is the muscle point of the upper arm.

20 In addition, a burn along his back extending from
21 his shoulder to his hip and an area which looked like third
22 degree over the left hip area.

23 In addition, as I recall from here, the ears were
24 severely involved.
25

mcpd 2

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Q Doctor, of the various areas of his body that you described which section shows which part of his anatomy sustained the most obvious third degree burns according to those pictures taken on or about the 15th?

A As I said --

MR. HAGAN: I object to the form of the question. I have no objection if he simply asks him to testify as his recollection is refreshed.

THE COURT: I was about to raise that question myself. I don't know whether you can look at a picture and make that --

THE WITNESS: I was just about to answer -- I think you both are making valid points and I said earlier that in the initial phase of the burns it is very difficult. What you are taking is a photograph at a point in time --

MR. HAGAN: I move to strike all of this.

THE COURT: The question is based on your recollection of what parts of his body were burned.

MR. HAGAN: I think now that he has had an opportunity to look at the photographs he should now testify from his recollection. He said it was refreshed.

THE COURT: Go ahead.

Q Can you answer that question, Doctor?

A Can you repeat the question?

1 Q The question is, now that your recollection has
2 been refreshed by looking at the photographs, Plaintiff's
3 Exhibits 46, 47, 48 and 49 for identification, can you tell
4 the jury and his Honor which parts of his body it would
5 appear sustained the most severe burn?
6

7 A I would say the hands, his dorsum -- the dorsums
8 of both hands and his arms and very likely the ears.

9 Q What is the color of the parts of the skin that
10 were affected?

11 MR. HAGAN: Objection.

12 THE COURT: Objection sustained.

13 Q Do these pictures, Exhibits 46, 47, 48 and 49,
14 faithfully reproduce the color of the Plaintiff's skin?

15 A Yes.

16 Q In the burned areas as it appeared on or about
17 August 15, 1971?

18 MR. HAGAN: Objection.

19 THE COURT: Objection sustained.

20 MR. HAGAN: I object to this line of examination
21 and I ask that Mr. Elkind be instructed not to pursue this
22 line of examination.

23 THE COURT: All right, Mr. Elkind, I think that
24 is right.

25 MR. ELKIND: To make the record clear, your Honor,

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2 may I now offer in evidence Plaintiff's Exhibits 46, 47, 48
3 and 49?

4 MR. HAGAN: I object to them, your Honor.

5 THE COURT: Objection sustained.

6 Q Doctor, have you been able to describe the burn
7 injuries that you observed on or about August 15, 1971 in
8 Jersey City Medical Center completely to the jury?

9 MR. HAGAN: Objection to the form of the question.
10 He is just leading the witness now.

11 THE COURT: I don't know about that. I think
12 that he asked the doctor whether he was given a full
13 description of his injuries.

14 Have you?

15 THE WITNESS: I think that the description --

16 THE COURT: Have you given a full description of
17 his injuries, Doctor? That is the question I asked.

18 THE WITNESS: Can I just qualify my statement?

19 THE COURT: If you can, answer yes or no first.

20 THE WITNESS: I will answer it yes with a quali-
21 fication.

22 THE COURT: All right, make the qualification.

23 THE WITNESS: The qualification is that, as I
24 tried to explain before when I was interrupted, the burn
25 injury is not a static injury. It is a continuum and the

1
2 initial phase of an injury may not reflect the ultimate
3 phase of the injury.

4 THE COURT: You are asked to describe his
5 condition on that particular day.

6 THE WITNESS: On that particular day I think it
7 was adequately described.

8 THE COURT: You are restricted in your descrip-
9 tion as to what occurred subsequently now.

10 THE WITNESS: On that day I think the description
11 is adequate.

12 Q Now, Doctor, when did you next see Mr. Hughes
13 after the 15th?

14 A I would say that he was seen every day, although
15 the notes may not necessarily reflect this.

16 Q Did you observe any changes in his condition on
17 the 16th?

18 A 25th. The 16th?

19 Q Yes.

20 A I have no notes here to show any change.

21 Q Doctor, you indicated that in connection with a
22 second-degree burn there is a loss of some substance in
23 the blood. I think you described that as electrolytes.

24 A Yes.

25 Q What is the significance of that loss? What was

General Motors and I will read the question first and I will read the response.

THE COURT: The plaintiff has propounded written questions called Interrogatories to the defendant, General Motors.

Who answered the Interrogatory?

MR. ELKIND: It was sworn to by Marguerite Novelli, assistant secretary of General Motors Corporation.

THE COURT: The answer to the Interrogatory, that is, the answer of General Motors to this Interrogatory will be read to you. I don't know what the answer is, but he is going to read the Interrogatory. All right.

MR. ELKIND: Interrogatory 14:

"Describe in full detail the gasoline tank assembly and filler neck, including its exact position in relation to the passenger compartment of General Motors Corporation 1966 truck, serial No. V4005F42814E."

The answer is:

"Defendant respectfully suggests that a perusal of Catch A attached will provide the information sought here, with the exception of some material and capability specifications enumerated hereinbelow.

"The tank capacity, 13 gallons; material of tank, Terne plate steel; filler neck, rubber; and Terne plate

1 steel."

2
3 Sketch A which was attached, I now offer in
4 evidence as Plaintiff's Exhibit 50. I understand there is
5 no objection?

6 MR. HAGAN: No objection, your Honor.

7 (Plaintiff's Exhibit 50 received in evidence.)

8 MR. HAGAN: I am going to have several of these
9 sketches. Would it be possible to get a blackboard on which
10 we could lay them over? It would make it less difficult.

11 THE COURT: I will ask my clerk to see if he
12 can locate one.

13 A L V I N S. W E I N S T E I N, called as a
14 witness in behalf of the plaintiff, after having been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ELKIND:

18 Q Professor Weinstein, where do you reside?

19 A In Pittsburgh, Pennsylvania.

20 Q What is your position in Pittsburgh, what do you
21 do?

22 A I am a professor of mechanical engineering at
23 Carnegie Mellon University.

24 Q What is your educational background?

25 A I have a Bachelor of Science degree in mechanical

1
2 engineering from the University of Michigan, and a Master of
3 Science degree and a Doctor of Philosophy degree in
4 mechanical engineering from the Carnegie Institute of
5 Technology.

6 Q Following your graduation and your attainment of
7 your Master's degree, did you begin teaching?

8 A Following the Doctor's degree, yes.

9 Q What year did you get your doctorate?

10 A 1955.

11 Q From what institution?

12 A Carnegie Institute of Technology.

13 Q Did you then begin teaching?

14 A Yes.

15 Q When were you promoted to full professor?

16 A 1965.

17 Q Have you been the recipient of any awards in the
18 field of mechanical engineering?

19 A Yes.

20 Q What awards?

21 A I received an award from the American Iron and
22 Steel Institute for research in metal behavior. I received
23 an award from the American Society of Mechanical Engineers
24 for a technical paper, and I received a teaching award from
25 the American Society of Teaching and Education.

1
2 Q Besides your teaching activities in mechanical
3 engineering, do you also do research?

4 A Yes.

5 Q In studies in connection with the failure of
6 various products?

7 A Yes.

8 Q Will you give your background and describe your
9 experience in that area?

10 A I do two types of what is called consulting work.
11 That is involves design and analysis for corporations and,
12 in addition, I do investigations of product failures for
13 insurance carriers and for attorneys.

14 Q Did you at my request undertake to analyze the
15 vehicle that was involved in the fire in New Jersey on
16 August 14, 1974 and the cause of that fire?

17 A I didn't analyze the vehicle. I analyzed or
18 took note of the available evidence that was given to me
19 about that incident.

20 Q What evidence did you consider?

21 A I considered the depositions of the various
22 witnesses. I considered the available evidence supplied
23 by General Motors in the form of manual, sketches. In
24 addition, I examined the sister truck, which was nearly
25 similar and which was produced shortly after the truck in

1 question.

2 I also investigated using literature sources and
3 colleagues as to certain facts surrounding this incident.

4 THE COURT: You are going to have to be very
5 specific. I think that you are going to have to be very
6 specific when you say you examined depositions and manuals
7 and so forth. You are going to have to tell us what
8 depositions you examined as part of your analysis, what
9 manuals you are referring to, what sources, and so forth.

10 THE WITNESS: Fine.

11 MR. ELKIND: I will come to that.

12 THE COURT: No, he has given us an answer and
13 based upon his sources, so let's get it out now.

14 A I read the deposition of Mr. John Hubbard from
15 General Motors Corporation, Mr. Michael Lavella, Mr. Charles
16 B. Brennan, Mr. Hughes. I read the first set of
17 Interrogatories, defendant's first Interrogatories;
18 response to requests for production of documents;
19 defendant's second set of Interrogatories; plaintiff's
20 Interrogatories, and the Complaint and Answer. Also, United
21 States patent 301730; United States patent 2779498; General
22 Motors drawing MD98254. This one, this drawing, the drawing
23 number is obliterated. I think we have a larger one of this.
24 It shows the fuel tank and its connections.
25

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1 Sketch A, Sketch B, one entitled "1966 GMC Model 4000 fuel
2 line routing."
3

4 I examined the four photographs of the truck in
5 question taken sometime after the fire. In addition,
6 with regard to references that I examined in terms of
7 information, the first is entitled "Chemistry in Relation
8 to Fire Risk and Fire Extinction," by A. M. Cameron, and
9 "Combustion Flames and Explosion of Gases," Lewis N. Von Elb;
10 "Proceeding of Fire Research Conference 1956, National
11 Academy of Sciences, Publication 475," and "Flammability
12 Characteristics of Combustible Gases and Vapors," by
13 M. Zabetakis; the United States Bureau of Mines, Bulletin
14 627.

15 In addition, I had discussions with two colleagues.
16 The first is Dr. Robert Chaiken, employed by the United
17 States --

18 MR. HAGAN: Any discussions with other people who
19 aren't here to testify. We don't know --

20 THE COURT: I know that, but I gather what
21 Professor Weinstein is saying is that he had discussions
22 with these people and based upon those discussions has been
23 helped to reach his conclusions without going to what they
24 said. He has a right to mention that.

25 THE WITNESS: May I give the name Dr. Robert

1 MCPD 8
2 Chaiken of the United States Bureau of Mines in Pittsburgh;
3 Dr. Terry Hockenberry, electro engineer, and a Chief O'Bannon
4 who is chief of the Oakland Fire Station in the Pittsburgh
5 area.

6 Q Included in the material which you read, did you
7 also have the deposition of Henry Ollert?

8 A Yes, I did. I'm sorry. I must have skipped that.
9 In addition, I also have sections of the GMC manual. It is
10 called the GMC Maintenance Manual, Models 1000 through 5000,
11 dated August 17, 1964. I also read a report by a Chief M.
12 Cahill. I must have bypassed it in my references. I
13 recall that one and Mr. Ollert as well.

14 Q Did you also read the deposition of Chief Price;
15 did you mention that?

16 A I read it, yes. I did not mention it.

17 THE COURT: All right, we have the blackboard
18 available.

19 (Pause.)
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(Continued on Page 369)

1 THE COURT: Is that Exhibit 50 that is on the
2 board?
3

4 MR. ELKIND: Yes, your Honor.

5 MR. HAGAN: Your Honor, I can't remember. It
6 may already have been identified by Mr. Elkind, but just
7 so the record is clear, Exhibit 50 is a sketch prepared
8 by General Motors in response to that interrogatory Mr.
9 Elkind gave earlier as to showing the location of the fuel
10 tank.

11 THE COURT: All right.

12 BY MR. ELKIND:

13 Q Professor, would you mind standing down in
14 front of Exhibit 50?

15 MR. HAGAN: Maybe this would be a good point.
16 If he is going to question Professor Weinstein on this
17 exhibit, I would object to that at this point because, al-
18 though Professor Weinstein is obviously a very well
19 educated gentleman, I have heard yet no testimony that he has
20 any particular expertise in the area your Honor and the
21 jury and ourselves have been working on in the last few
22 days, that is, fuel tanks, their placement in trucks and
23 potential causes of accidents of fuel tanks placed in that
24 situation, and it seems to me that has not been
25 established yet.

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1 THE COURT: I agree.

2 MR. ELKIND: I beg your pardon?

3 THE COURT: I agree. You questioned him generally
4 about products, but I don't think you zeroed in on anything
5 like that.
6

7 I'll let you ask him.

8 BY MR. ELKIND:

9 Q Professor, I'm going to ask you --

10 MR. HAGAN: I'm sorry again. Mr. Elkind, could
11 you examine from here? Because sometimes it gets in the
12 way and I can't see the witness.

13 Q Professor, are you familiar with the purpose of
14 a fire wall in an automobile or a truck?

15 A Yes.

16 Q And what is the basis of your information?

17 MR. HAGAN: I object to the form of that question.

18 Q What is your expertise in that area?

19 A You asked me about fire walls?

20 Q Fire walls.

21 A If I may, perhaps I could try to explain what it
22 is in my background that I think lends me the ability --

23 THE COURT: That is precisely what we would like
24 to hear.

25 THE WITNESS: Right.

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2 THE COURT: Precisely what we would like to hear,
3 Professor.

4 THE WITNESS: May I?

5 THE COURT: Yes.

6 THE WITNESS: Let me try to distill it for you.

7 As a mechanical engineer, part of our training
8 is is of course in fluids, which includes liquids and
9 gases, how they mix, how they behave. In addition, part of
10 mechanical engineering training is the whole area of
11 combustion, combustion to produce heat or to produce
12 energy, combustion inside of an engine. That's part of
13 the mechanical engineer's basic training.

14 That's not enough. But the point that we have
15 basic training in this area plus the fact that I have
16 personally investigated three fire related incidents,
17 one having to do with a truck, one having to do with an
18 automobile, one having to do with a gocart, that plus
19 the fact that one of the meanings of the doctor's degree
20 is that you are capable of learning on your own, my basic
21 mechanical engineering discipline gives me the foundation
22 in the mixing of fluids and in combustion.

23 That plus reading the references, trying to build
24 up an understanding of this, having investigated fires
25 actually, I think gives me sufficient background, that

1 couple with my design experience with major corporations
2 like Westinghouse and Joy Manufacturing Company, all having
3 to do with design of machine members, placements of fuel
4 elements, controls, I think all of these permit me to draw
5 a conclusion in this area.
6

7 MR. HAGAN: May I inquire on voir dire at this
8 point?

9 THE COURT: Are you through?

10 MR. ELKIND: If he wants to inquire.

11 THE COURT: I mean in terms of the qualifications
12 are you through?

13 MR. ELKIND: I would like to ask him about --

14 THE COURT: I know. But before you ask about
15 that, Mr. Hagan obviously has to examine him on voir dire.
16 I just wanted to know whether you are through examining
17 him on his qualifications.

18 MR. ELKIND: Only with respect to the fire wall.
19 Now I am going to get to the other components which are
20 shown on Exhibit 50.

21 THE COURT: You had better get there so that Mr.
22 Hagan then will be in a position to examine him on voir
23 dire about everything.

24 MR. ELKIND: All right.

25 Q As part of your training in mechanical engineering,

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are you required to understand designs and draw designs
yourself?

A Yes.

Q And can you interpret, by looking at a print of
that kind, where the various articles shown on the print
are actually located in a vehicle?

MR. HAGAN: Objection.

THE COURT: I don't think that helps. I think
that Professor Weinstein has indicated that he has familiarity
with designs and he indicated that part of the designs and
his consulting has been in regard to fire control.

You are not helping us by asking him about sketches.
You are not adding anything to that. If that's all you
are going to ask him, then I'll turn the matter over to Mr.
Hagan for voir dire.

MR. ELKIND: Very well.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. HAGAN:

Q Do you know the date of this accident?

A August 14, 1971.

Q When were you first consulted on this?

A I was called first on September 22, 1974.

Q You stated you never saw the accident vehicle,

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is that correct?

A Yes; only photographs.

Q You mentioned three other fires you investigated:

A Yes.

Q I think one was a go-cart, did you say?

A Go-cart, c-a-r-t.

Q Right. Go-cart. And one was what?

A An automobile.

Q Right.

A And one was a truck.

THE COURT: What is a go-cart?

THE WITNESS: A go-cart. A little vehicle used by youngsters. It has a small gasoline engine about the size of a lawnmower engine and you can drive it.

Q And in those three cases, sir, did you have the opportunity to inspect the vehicle that was claimed to have had the fire?

A Yes.

Q In each of the three cases?

A Yes.

Q Am I correct then that in this case, this is the first time you have testified --

MR. ELKIND: I understand this was a voir dire on Dr. Weinstein's qualifications.

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THE COURT: It is.

MR. ELKIND: It is not a question about his qualifications.

THE COURT: I think so. He is raising it as such. The question is attempting to raise that this is the first time that the doctor is testifying in a case of this kind, with this sort of thing, and I don't know --

MR. ELKIND: That is not so, your Honor. He is trying to bring out --

THE COURT: Sit down. You can ask him questions. Sit down.

All right, Mr. Hagan.

BY MR. HAGAN:

Q Doctor, am I correct that this is the first time you have ever testified with respect to the cause of a fire in a vehicle where you never had an opportunity to actually inspect the vehicle in question? Is that correct?

A That is correct.

Q Now, Doctor, you told us about your education. Were you ever employed in the auto industry?

A No, sir.

Q Have you ever designed a fuel system for an automobile or a truck?

A No, I have not.

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Q Have you ever designed any part for an automobile?

A No, I have not.

Q Have you ever consulted on the design systems to be installed in trucks and the various factors involved in installation of fuel systems in trucks, in the auto industry?

A No, I have not.

Q Do you have knowledge of the state of the art in the placement of fuel tanks in trucks made by American manufacturers, say subsequent to World War 2 and up to the time of this accident?

A I am reasonably familiar with the placement of gasoline tanks over the last ten, 15 years.

Q That isn't what I asked you, I don't think.

A From the end of the Second World War?

Q From the end of the Second World War through to the date of this accident is my question.

A No, I'm not familiar from that entire time period.

Q Now, in connection with gasoline, your knowledge of gasoline, sir, have you consulted with oil companies perhaps on the properties of gasoline and matters of that kind?

A Yes, I have, as a matter of fact. I've been a

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3 consultant for the last six months for Consumers Union,
4 who has the mandate from the Consumer Products Safety
5 Commission to develop new safety requirements for powered
6 lawnmowers, and part of that standard is involved with
7 fire and burns, and we have consulted with Texaco, Gulf,
8 Shell with regards to temperatures of gasoline tanks, place-
9 ment of gasoline tanks on lawnmowers.

10 Q Then am I correct, do you consider yourself,
11 sir, an expert in the fuel known as gasoline?

12 A I consider myself knowledgeable enough to be
13 able to comment about limits of flammability, ease of
14 ignition --

15 Q Could you answer my question, sir?

16 A If you define what you mean by "expert."

17 Q I think my question is understandable. All I'm
18 asking, sir, is, you have testified before, do you con-
19 sider yourself an expert in the field of gasoline? Yes
20 or no?

21 MR. ELKIND: Let me object to the form of the
22 question.

23 THE COURT: Well, I agree, Mr. Hagan. We are
24 not interested in -- suppose he does. What difference does
25 it make? That's not the question put to him.

MR. HAGAN: Your Honor, I object to the testimony

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1 of this witness on the element present in this case relating
2 to the fuel tank in this vehicle and I assume we are going to
3 be leading up to the alleged cause of the accident. The
4 record is clear that this witness never saw the vehicle
5 in question. He wasn't even retained until some three years
6 after this accident. His only knowledge of this matter
7 comes from reading the material he told us about before.
8

9 He did not mention, and therefor I assume it
10 didn't happen, that he ever interviewed any of the partici-
11 pants involved.

12 THE COURT: He said he read Mr. Hughes' deposition
13 and he also said he read the deposition of the fire chiefs
14 and of the Commissioner.

15 MR. HAGAN: Your Honor, I submit that he is not
16 qualified to testify in this case and I would object to any
17 expect testimony about the fuel system and the causes of
18 this accident, based on the witness' own testimony here.

19 THE COURT: You said that you had examined the
20 vehicle -- whether it is true or not, you called it the
21 assister vehicle; you examined that.

22 THE WITNESS: Yes.

23 THE COURT: I don't know whether this should be
24 directed to you or not, but are these specially built
25 sui generis vehicles, so far as you know, or are they part

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2 of mass production?

3 THE WITNESS: The cab and chassis are part of mass
4 production. The kind of body you put on it depends upon
5 what you order, a dump boady or state body or some other
6 type of body.

7 THE COURT: All right. I am going to overrule the
8 objection and accept Professor Weinstein as an expert on
9 my understanding, unless I am enlightened to the contrary,
10 that the professor is making a judgment, even though he
11 has not seen the vehicle, on the theory that the vehicle
12 is similar to the one he saw in respect of the placement
13 of the gasoline tank and the rest.

14 Based on that evidence plus his own training it
15 seems to me that he is qualified to give an opinion in this
16 matter. So the objection is overruled.

17 All right. You may inquire.

18 MR. ELKIND: Your Honor, I think that it would be
19 appropriate at this point in the record, if I may,
20 to read a request to admit with reference to the similarity
21 of the two trucks, the one that the professor examined and
22 the one that was involved in the fire, as set forth in the
23 requests to admit.

24 THE COURT: I don't know what this is. Are
25 you saying that General Motors has indicated that they

were similar?

MR. ELKIND: Yes. They have admitted that the fuel and ignition systems of the two trucks were of the same design.

THE COURT: All right.

MR. ELKIND: At the time.

MR. HAGAN: Excuse me, your Honor. May I clarify that?

MR. ELKIND: I'll read it.

MR. HAGAN: It is admitted that the two systems were similar at the time of manufacture in 1966. What their condition was in 1971 we have no way of knowing.

THE COURT: All right. Fine. I think that is admitted. We can --

MR. ELKIND: Is that adequate, your Honor?

THE COURT: If it is adequate for you, it is adequate for me. I think that Mr. Hagan has made an accurate statement of what the situation is. So let's proceed.

BY MR. ELKIND:

Q Professor, would you please step down and take a position at the blackboard?

A All right.

Q I'm giving you a green pen. Would you please

1 indicate to the jury that part shown on Sketch A which
2 is the fire wall?
3

4 A The area that is considered to be the fire wall
5 is sheet metal which separates the engine compartment from
6 the passenger compartment. It is that part that your
7 feet rest against when you are sitting in the front seat,
8 generally metal, and it has some holes in it to permit
9 wires and hoses to go through into the passenger compartment.

10 It is called a fire wall because, if a fire
11 develops under the hood, it is to prevent the fire from
12 flowing into the passenger area.

13 Q Now, would you write "fire wall" right on the
14 fire wall?

15 A Yes (writing).

16 Q Now I call your attention, Professor Weinstein,
17 to that (indicating). What is indicated by that part of
18 the sketch?

19 A This series of darkened lines represents the air
20 intake, fresh air intake, into the cab. It is behind the
21 fire wall. There is a passageway which leads from this
22 set of openings down the side of the vehicle into vents
23 which are inside, roughly at thigh level, both on the left
24 side and on the right side of the cab (drawing).

25 The air flows this way and into the cab. But it

1 jrf 14

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2 is separated from the fire wall.

3 Q And it is on the passenger side of the fire
4 wall.

5 A Yes.

6 Q Now, would you please show that portion of the
7 diagram which is intended to represent the tank?

8 A The gasoline tank?

9 Q The gasoline tank.

10 A Yes. (Marking)

11 Q And what is the piece that extends from the tank
12 to the opening?

13 A It is called the filler neck. Do you want me to
14 label that?

15 Q Filler neck? Yes.

16 A Filler neck (marking).

17 Q Now I show you Plaintiff's Exhibit 42 and I ask
18 you if this is the type of filler neck which is in that
19 particular truck (handing)?

20 A Yes. The tank itself is made out of metal, and
21 to connect the opening of the tank, which admits the gasoline
22 into the tank, to the gas cap, which is just outside the
23 door, the driver's door, you have a piece of hose which is
24 first clamped to the tank, right here, and then it is
25 clamped again to a piece of plastic which comes out

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through the body of the truck, and in this is screwed the gas cap.

Q I note that on Exhibit 42 there is a yellow line.

A Yes.

Q Is the yellow line portion of the tube extending outside the body of the truck?

A As this plastic tube emerges from the neck, there is a rubber-like material which surrounds this like a gasket, and this yellow line -- the truck had been painted yellow, from which this was removed, and this is approximately where it comes out of the body of the truck, body of the cab.

Q Now, the other end of Exhibit 42, that is, the part furthest from the opening on the outside, is that within the structure of the cab?

A Yes. It is inside the cab.

Q Is it inside the cab where it can be seen? Or is it inside the wall of the cab?

MR. HAGAN: Objection to the form of the question. Whether it can be seen or not depends on where you are looking at.

THE WITNESS: Well, from almost any location you can't see it.

MR. HAGAN: I object to it.

1 THE WITNESS: You can feel it.

2 THE COURT: Objection overruled.

3 Go ahead, Doctor.

4 THE WITNESS: (Continuing) The sheet metal here
5 at the back of the cab rolls around. You can't see this
6 part of the connection. You can reach underneath and feel
7 it, but you can't see it.

8 Q Now I show you the gas tank from a sister truck,
9 which has been marked as Plaintiff's Exhibit 45, and I ask
10 you whether this attachment from the gas tank extends into
11 the wall of the cab.

12 A The entire tank is inside the wall of the cab.
13 It is right behind the seat. So all of this, the tank and
14 the filler neck on the tank, the rubber and part of this
15 plastic tube, are all inside the cab. Only this part is
16 outside.

17 Q I call your attention to this part of the design
18 here (indicating), right here. Is this solid on the
19 inside?

20 A You are referring to the tank itself?

21 Q No, not the tank. The wall.

22 MR. HAGAN: I object to the form of the question,
23 your Honor. I don't think it is clear what he is talking
24 about.
25

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MR. ELKIND: All right. Let me withdraw the question. I think you are right.

Q Is this a wall behind the gas tank? I know the seat is on one side. Is there a wall on the other side of the gas tank?

A On the back side of the gas tank?

Q Yes.

A Yes. That is the back wall of the cab, where the window is. It comes right down behind the tank.

Q Where does that wall intersect this segment of the gas tank?

A It doesn't. The wall of the cab, back here, is just behind all of this. This piece is on here like this. Part of the wall wraps around where the door opening is and comes back a little bit, so that you can't see this area, but it is all exposed inside the cab. You can't see it. A piece of sheet metal comes around from the door frame opening. You can't see it, but you can reach your hand up underneath.

Q Professor, does the back wall that you spoke about appear on Plaintiff's Exhibit 19?

A Yes, it does.

Q Can you mark that "back wall", please?

A (Marking) Shall I identify the filler neck?

Q No, not yet.

And is there also a portion of the side wall between the back wall and the door?

A Yes. Shall I label that?

Q Yes. Mark that.

A (Marking).

Q And will you now draw an opening to the point on Exhibit 19 through which the filler tube assembly extends?

A (Marking).

Q Now, is that space that you have drawn, the arrow showing the filler tube, large enough for a hand to go through?

A Yes. You can just squeeze your hand up in there.

MR. ELKIND: May I have permission to show this to the jury, your Honor?

THE COURT: Yes. But do you want the professor to return to the stand now?

MR. ELKIND: Yes. You can return to your seat.

(Witness resumed the stand.)

Q Looking now at Plaintiff's Exhibit 42 --

THE COURT: I think you had better wait and let them look at that, because their attention is distracted.

(Pause.)

Q Looking now at Plaintiff's Exhibit 42, Professor,

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1 which is on the podium, can you tell me what these two metal
2 devices are?

3
4 A They are called hose clamps.

5 Q And what is their function?

6 A Their function is to maintain a seal between the
7 rubber hose and the metal filler neck on the tank on the one
8 side and to maintain contact between the rubber hose and the
9 plastic filler tube on the other side. You tighten them
10 by putting in a screwdriver and continuing to screw it down
11 until it gets tight (indicating).

12 Q Assuming that one of those screws should become
13 loose on Exhibit 42, is there any way that a tube, that
14 a screwdriver can be put up into the space that you
15 have shown on Plaintiff's Exhibit 19 in order to tighten
16 it?

17 MR. HAGAN: I object to the form of the question.

18 THE COURT: Objection sustained.

19 Q Now, part of this device, the filler tube assembly,
20 is rubber, is that correct?

21 A Yes.

22 Q Now I show you a document of the U.S. Patent
23 Office --

24 MR. HAGAN: May we approach the side bar,
25 your Honor?

1 THE COURT: Let's get it over with.

2 What are you showing him that for? Are you going
3 to introduce it into evidence?

4 MR. ELKIND: Yes, your Honor.

5 What was your question, sir?

6 THE COURT: What are you showing him that document
7 for?

8 MR. ELKIND: Plaintiff's Exhibit 51, which is
9 U.S. Patent --

10 THE COURT: Has that been marked? I didn't realize
11 it had been.

12 MR. ELKIND: It has just been marked for
13 identification.

14 THE COURT: All right.

15 Q U. S. Patent Office, Patent No. 2,779,498,
16 patented on January 29, 1957 --

17 THE COURT: All right. I'll see you.

18 (At the side bar.)

19 THE COURT: That is the patent we had the discussion
20 with?

21 MR. HAGAN: That is correct, your Honor. And
22 I wish now to object strenuously to the form in which this
23 testimony is going in.

24 This witness apparently is now going to be
25

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1
2 led through the patent and to describe a patent before
3 he has ever discussed the case he has before him. I may
4 as well put it on the record now so you won't have any mis-
5 understanding of my objection.

6 This witness, who has never seen this vehicle,
7 comes in here and, on the basis of reading some depositions
8 and his background expertise, he is going to opine on what
9 caused this accident.

10 You haven't gotten to that point yet. You
11 haven't established that. You are now taking him into an
12 area of the design, in effect.

13 You first have to establish that this gentleman
14 is competent to testify that the filler neck and the
15 tank in that vehicle were defective. You haven't established
16 that yet. There is no evidence in this case at all.
17 And we are now getting into design.

18 THE COURT: I agree .

19 MR. HAGAN: I think that what you have to have him
20 testify about is an opinion about the design of the
21 vehicle No. 1.

22 Let me add on, just so there is no question
23 about what my position is that this witness must first estab-
24 lish that there was a defect in the fuel system of the
25 accident vehicle in his opinion and what the defect was

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1 and then establish that he can establish this by comparing
2 it to vehicle No. 1 and go on from there as to all these prob-
3 lems. But the first hurdle that he must take is to establish
4 that there was a defect in the vehicle No. 2 and that this
5 was the approximate cause of the accident.
6

7 THE COURT: All right.

8 MR. ELKIND: If your Honor please, this case is
9 being tried under the law of the State of New Jersey.

10 THE COURT: I understand.

11 MR. ELKIND: My understanding of the burden
12 that I have is to show a defective design.

13 The role of inferences and circumstantial evidence
14 is available without any expert witness having to pinpoint
15 any defect.

16 THE COURT: That is not how I understand it.
17 That is not how I understand the law of New Jersey.

18 MR. ELKIND: Your Honor, that I can make out a
19 prima facie case by showing that this fire was a flash
20 fire brought about by the ignition within the cab of the
21 truck of a flammable mixture of the gasoline vapors
22 and air, and that from that, plus the evidence with respect
23 to the patent and the evidence with respect to the placement
24 of the gasoline tank and the gas filter tube the jury
25 may then infer that the reason that there were gasoline

1 fumes in the cab at the time of the explosion was because of
2 the design defect which placed the gasoline tank in the
3 interior of the cab, of the car and placed the filler tube
4 within the cab and the filler concealed in a concealed area,
5 and with the opening just inches away from the door and
6 window.
7

8 THE COURT: As I understand New Jersey law, your bur
9 den is to show that this accident was caused by a design
10 defect, that is, that the cause was present before it left
11 the manufacturers. Or you may show it by circumstantial
12 evidence, by eliminating all other causes of the accident
13 and the jury may therefor infer and put to the jury that there
14 was some design problem.

15 You have done none of that and I agreed about
16 what your burden is with Mr. Hagan, plus the fact the
17 inference has been attenuated in terms of being
18 a design problem because of its age, and that I understand
19 is also the law of New Jersey.

20 So that you have got an age problem and
21 so forth. S it seems to me, if you have this man here and
22 he can show that in the design of vehicle No. 2 there was
23 a flaw which caused this accident he has got to testify
24 about it, and the way he got around this is that he
25 indicated he reached the various conclusions by looking at

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vehicle No. 1 and various other things.

He can certainly rely on those things to tell us how he reached his conclusions, but it seems to me that Mr. Hagan is correct.

Plus the fact that I think my responsibility is, if you don't establish that in terms of liability, I have to take the case from the jury and hold that you haven't established it as a matter of law. That's what I understand. That's what I understand New Jersey law to be and I understand my obligation to be.

MR. ELKIND: Let me hear your ruling on the record. I am now offering into evidence Plaintiff's Exhibit 51.

THE COURT: I told you that I agree with Mr. Hagan. This is premature. You can't now talk about some other design without establishing this design was defective. The fact that they could have used this other patent does not establish that this was defective. You have got to establish it was defective from this man.

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(In open court.)

2 Now, Professor, assuming that on August 14, 1971
Truck No. 2 was at a filling station in Jersey City, New
Jersey and that the occupants of the cab stated that after
some gasoline was put into the gasoline tank and the driver
turned the key there was a sudden flash fire which filled
the cab of the truck from side to side causing burns to all
of the occupants, the faces of all of the occupants, the
hands of all of the occupants; and assume further that that
sudden flash fire occurred when the driver turned the
ignition switch; and assume further that the driver said
that he saw flames come in front of the windshield; assume
further that a police officer saw the men jumping out of the
cab from a distance of 35 or 40 feet away; and that he saw
flames coming out from the cab at that time and that he
said he saw flames come from under the hood.

Now, based on those facts and on the pictures which
you examined, which are Plaintiff's Exhibits 1, 2, 3 and
4 in evidence, and based on your investigation which you
described in response to his Honor's question, do you have
an opinion, first, with respect to what was the substance
that caught on fire?

MR. HAGAN: I object to the form of the question.

THE COURT: It asks for an opinion of what the

1 substance was that caught on fire; is that right?

2 MR. ELKIND: What was the material that caught
3 on fire.

4 THE COURT: I don't understand that objection.

5 MR. HAGAN: He doesn't mean the truck caught on
6 fire. I think he means whether it was something that
7 started the fire, I believe. Maybe I don't understand the
8 question.

9 MR. ELKIND: I am talking about what was burning
10 in the flash fire.

11 MR. HAGAN: I still don't understand the question.

12 THE COURT: Do you understand it?

13 THE WITNESS: I think so.

14 THE COURT: All right.

15 MR. HAGAN: I object to the form of the question,
16 your Honor, as omitting a substantial number of facts which
17 have come in before your Honor and this jury in the last
18 couple of days which are not included in that question.

19 THE COURT: There has been no misstatement of
20 facts as far as I know and if there have been other facts,
21 it seems to me you would be free to add them.

22 All right, do you have an opinion? You said yes.

23 THE WITNESS: Yes.

24 Q What is your opinion?
25

1
2 A I wonder if I might, before I give that opinion,
3 sort of review the facts as I have assimilated them to draw
4 my conclusion.

5 MR. HAGAN: I object. I would like to have his
6 opinion now rather than the way the Professor wants to answer
7 it. I would rather have his opinion to the question your
8 Honor is allowing him to answer.

9 A In my opinion the most probable substance that
10 caused this flash fire that burned the man within the cab
11 was gasoline vapor.

12 Q What is the range for flammability of gasoline
13 vapors; what percentage in the air?

14 THE COURT: The next question is on what does
15 he base that conclusion. That is the next question.

16 MR. ELKIND: All right.

17 THE COURT: And his reasons for that conclusion.

18 Q What are your reasons, Professor, for that conclusion
19 that it was a fire of gasoline vapors?

20 A If I may, in a situation where you don't have
21 physical evidence what you try to do is to consider those
22 things which are possible and try to eliminate those which
23 are least probable in order to arrive at what you think is
24 the most probable source.

25 Let me try to go through the reasoning process:

1 The cab is isolated from the hood by the fire wall, by the
2 windshield, by the sheet metal. After filling or partially
3 filling the tank with gasoline then in close proximity to
4 the turning of the switch which the gentleman said then the
5 flame erupted almost completely across the width of the
6 cab came essentially out from underneath the dashboard,
7 across the entire width in front of their faces, hands,
8 there has to be something that burns. There has to be
9 something that fills that area. It can't just be air. It
10 has to be something mixed with the air that will burn.
11

12 What are the possibilities? A rag coated with
13 gasoline lying on the floor. It might let vapors come
14 up into the cab area. In order for the burning to take
15 place you have to have three things, you have to have a
16 source of ignition, something that lights the fire; you have
17 to have the material that will burn; and you have to have
18 air because the burning takes place when the material that
19 is capable of burning is in fact heated to a temperature
20 high enough to cause it to react with the air and burn.
21

22 Here we had a very large fire across the front of
23 the cab behind the fire wall, in front of their faces at
24 or about the time you turned the switch. Could it have
25 been dust? Unlikely. Dust of high enough concentration
to burn like that would be black. You couldn't see out at

1 all. It would just be covered with dirt. The area would
2 be so dark in order to have enough dust in the air to burn
3 that you couldn't have seen the inside of the truck.
4

5 We know that this material covered the entire
6 width of the cab. Wires can burn and parts and the dash
7 can burn, but they won't have a flash fire that comes right
8 in front of your face. It has to be something that was
9 mixed with the air and came out.

10 We have just filled the tank or partially filled
11 the tank. We know that when we fill gasoline tanks there
12 are vapors. Based upon all of this it seems to me that the
13 most probable source of the material that actually burned in
14 the cab in front, burned their faces, was gasoline or vapor.

15 MR. HAGAN: I move to strike the testimony as
16 based purely on surmise, not based on any physical evidence.

17 THE COURT: The objection is overruled. The
18 motion to strike is denied.

19 Q Do you have an opinion based on the same factors
20 as to where the source of ignition to light the gasoline
21 vapors was located?

22 MR. HAGAN: I object to the question, your Honor.
23 Again we are back in this area, your Honor. This witness
24 has not been established as an expert on the ignition system
25 and where sparks might come from, and how many sparks from

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the vehicle. That gets you to the probabilities with all the various sparks in a vehicle at different times. He hasn't been established as competent in that area.

THE COURT: I think as far as I am concerned what you have indicated goes to weight and you can query him on cross-examination. I would think that what we ought to get is an opinion and the hypothetical questions were proposed to him so he could answer them that way.

MR. ELKIND: May we have an answer to the question?

(Question read.)

THE COURT: In your opinion, what was the cause?

Q Where was the source of ignition located in your opinion?

A In my opinion, I believe that the most probable source of ignition was a spark generated some place in the cab and the most likely source of the spark is when in turning on the ignition switch there is a high probability of spark across the terminals of the ignition switch.

Q Will you state your reasons for having that opinion?

A First of all, I believe in your hypothetical question you indicated the close proximity of the flash of fire to the moment of turning on the ignition switch. There are,

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1 of course, other places within the truck that would develop
2 sparks, but all of the rest are under the hood, and with
3 the fire wall there, fine, you might have a spark there.
4 You might even have a fire there, but with the very tiny
5 holes that come through the fire wall you are not going to
6 get a flash flame across the entire cab. It means that
7 the probable source of ignition is inside the cab and the
8 most probable source of ignition is the switch.
9

10 Q Is a spark from an ignition something that
11 happens regularly and often?

12 A Yes, the size of the spark or its duration or
13 function, the age of the contacts, or how you turn the
14 switch on, the condition of all the electrical components
15 in the vehicle. It is an event that happens regularly.

16 Q It must be anticipated?

17 A Oh, yes.

18 Q Do you have an opinion as to whether or not the
19 design of this truck as shown on Exhibit 50 was a factor
20 in the fire which occurred on August 14, 1971?

21 MR. HAGAN: I object to the form of the question.

22 THE COURT: That objection is going to be sustained.
23 That is going to be sustained because this is too critical
24 an area to have that.

25 Q Do you have an opinion as to the sources for the

1 presence of gasoline, of a combustible mixture of gasoline
2 vapors and air in that cab?

3
4 MR. HAGAN: I object to the form of the question.

5 THE COURT: Read the question.

6 (Question read.)

7 MR. HAGAN: May I be heard on this point?

8 THE COURT: No, not until I finish doing some
9 thinking about it.

10 All right.

11 MR. HAGAN: Your Honor, at this point now the
12 witness really is just being asked to do little more than
13 guess where fumes might have come from. That is really
14 what he has been asked to do now and that isn't a source
15 of expert testimony, because I think your Honor and every
16 member of this jury who is sitting in a gas station getting
17 gas and somebody smells some gas inside their cab, perhaps
18 can speculate about where the fumes are coming from and
19 that doesn't call for expert testimony. This is just
20 four years later. I can call it a guess, without meaning
21 to be disrespectful to the Professor.

22 THE COURT: I think that is so. Why don't you
23 try again, Mr. Elkind? Make the question a little more
24 precise.

25 Q Professor Weinstein, will you please state your

1 opinion with respect to the possible sources for the
2 presence of flammable mixture of gasoline vapors and air
3 in the cab of the truck?
4

5 MR. HAGAN: Objection, your Honor.

6 THE COURT: Now you are talking about August 14,
7 or whenever it was, and this particular truck, that is, in
8 the cab of the particular truck in question at the
9 particular time?

10 MR. ELKIND: Yes.

11 THE COURT: All right, I will let him answer.
12 Your objection is noted. You may answer.

13 A I think that one has to look at probabilities.
14 With the gas tank inside the cab, with the filler neck
15 right outside the door, the knowledge that gasoline tanks
16 rust, the knowledge that connections loosen or age with
17 time, the knowledge that with the tank immediately behind
18 the seat, would there be no storage area for any kind of
19 equipment so that somebody could throw a wrench or tire iron
20 behind the seat without recognizing the possibility of
21 puncturing a hole in the tank, the possibility of all the
22 connections coming loose with time, it seems to me that the
23 presence of that gasoline tank right behind the seat,
24 unprotected, with the filler neck right outside the door
25 immediately adjacent to the window provides a high probability

1 of source of gasoline vapors at the time the tank was
2 being filled.
3

4 MR. HAGAN: I move to strike the answer of the
5 witness, your Honor, as pure speculation at this point.
6

7 THE COURT: No.

8 MR. HAGAN: And not based on any knowledge of
9 the vehicle at the time. It is not based on circumstances.
10 There could have been a puddle of gasoline at the bottom of
11 the gas tank. There are a lot of possibilities and your
12 Honor could do it the same way, but this is not a subject
13 of expert testimony.

14 THE COURT: The objection is overruled. You can
15 explore his knowledge on cross-examination.

16 Q So that, Professor, regardless of the mechanics
17 of how the gasoline vapors actually got in the cab --

18 THE COURT: Mr. Elkind, please, you know that is
19 going to be objected to.

20 MR. ELKIND: All right.

21 At this time, your Honor, may I renew my offer
22 with respect to Plaintiff's Exhibit 51, which is the
23 patent?

24 THE COURT: No.

25 MR. ELKIND: Your Honor makes the same ruling?

THE COURT: Yes.

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1 mcpd 11
2 Q Is there any necessity in this particular truck
3 for having the gasoline tank within the passenger cabin?

4 MR. HAGAN: I object to the form of the question.

5 THE COURT: That objection 's sustained.

6 Mr. Elkind, I would suspect that you can say that of any
7 design. There is no necessity for it. That doesn't help
8 us.

9 Q I show you Plaintiff's Exhibit 33 in evidence and
10 I ask you what that shows.

11 A Exhibit 33 is a photograph of the right-hand
12 side of the sister truck in the area behind the cab and in
13 front of the rear wheels.

14 Q Is that a vacant area as shown in this picture?

15 A Yes, sir, it is.

16 MR. ELKIND: May I have permission to show it to
17 the jury, now? I am referring to Plaintiff's Exhibit 33 in
18 evidence.

19 MR. HAGAN: May we approach the bench, your Honor,
20 because while the jury is looking at it we may be able to
21 discuss a matter.

22 THE COURT: All right.

23 (At the side bar.)

24 MR. HAGAN: Your Honor, we are now getting into an
25 area, I anticipate, where we are going to start talking about

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1 subsequent design and changes and I am objecting on the
2 record now to any testimony elicited from this witness about
3 where gas tanks are on trucks today or anything along that
4 line, or subsequent design changes. Such testimony is in-
5 admissible. Even the new rule, Rule 407, which goes into
6 effect on July 1 makes that clear, and if we are going to
7 now start talking about where you might put the tank -- he
8 has not gotten into any of the discussion of why this design
9 is defective or any of that. Again we are just jumping
10 ahead of ourselves.
11

12 THE COURT: It does appear to me, as a matter
13 of fact, that if Professor Weinstein had enough evidence
14 that this design in terms of safety factors was outrageous,
15 and so forth and so on, by virtue of whatever reasons they
16 are, I would think that that is where we ought to go. I
17 would think that is what you ought to do next. You have
18 not done that, Mr. Elkind.

19 It is not my position to tell you how to try your
20 case, but you haven't done that and I don't see how you can
21 go further. You may not even be able to go further after
22 you have established that, but you have to establish some-
23 thing about this design.

24 MR. ELKIND: All right, I will follow your Honor's
25 suggestion.

2 (In open court.)

3 THE COURT: Why don't we take a 10-minute recess.

4 (Recess.)

5 Q Professor Weinstein, Plaintiff's Exhibit 50 shows
6 a side of the truck that was involved in this fire as it
7 left the factory; is that correct?

8 A Yes.

9 Q Do you have an opinion with respect to the design
10 as shown on Exhibit 50 with respect to safety factors?

11 MR. HAGAN: Objection, your Honor.

12 THE COURT: I am going to allow him to answer.
13 Do you have an opinion?

14 THE WITNESS: Yes.

15 Q What is your opinion?

16 A I will interpret your question, if I may, with
17 regard to the question of the location of the gasoline tank
18 within the cab with regard to potential safety. Is that
19 correct?

20 Q Yes, as shown on Exhibit 50.

21 A The gasoline tank is within the cab, entirely
22 within the cab or truck right behind the seat. Recognizing
23 what I said earlier with regard to the probability of rusting
24 through the tank, with regard to the location of that filler
25 neck right outside the door, the propensity for penetration

1 by some object or tool that may be inadvertently thrown
2 beside the seat, the probability of looseness of connections,
3 all of which are inside the cab, all of which can release
4 vapors within the cab of the truck, in my opinion the loca-
5 tion of that tank is unreasonably dangerous. General Motors
6 does provide tanks outside on the frame, side rails, beneath
7 the steps, locations where if these things happen, rusting,
8 leakage, loose connections, the gasoline vapors may fall to
9 the ground, may be dissipated by the air. With the present
10 design within the cab, the only place any possible vapors
11 can go is within the cab.
12

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14 (Continued on Page 407)
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MR. HAGAN: Your Honor, I move to strike all the testimony just given on the ground that at this point now he has not defined the safety factors he is talking about, he hasn't been qualified as an expert in safety factors. Gasoline tanks --

MR. ELKIND: If your Honor please, may I suggest that if counsel has an objection that he just state he has an objection and not make these comments about the witness' testimony each time?

MR. HAGAN: All right. I move to strike the testimony.

MR. ELKIND: I thought we agreed that we would have any discussions about the testimony at the side bar, your Honor.

THE COURT: Well, in any event, the motion to strike is denied. Again, I think that what you raised goes to the weight and you may deal with that in cross examination.
BY MR. ELKIND:

Q Does Plaintiff Exhibit 33 in evidence show such an alternative location for a gas tank in trucks No. 1 and 2 (handing)?

THE COURT: I am not going to allow that.

MR. ELKIND: Counsel, at this time I would like to read into the record --

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MR. HAGAN: Can we go to the side bar?

MR. ELKIND: Yes.

(At the side bar)

THE COURT: What is this?

MR. HAGAN: Your Honor, --

MR. ELKIND: Let me just make my tender and then the Judge can make the ruling, because I think I know what his ruling is going to be.

I propose, your Honor, to read Request to Admit No. 2, which says "That the defendant discontinued the design and manufacture of motor vehicles and trucks with gasoline tanks in the same compartment as that occupied by the driver and passengers," and that is admitted at least as to domestic production.

THE COURT: When d d they do that? No date?

MR. HAGAN: We can supply a date.

THE COURT: My only problem with this is, the reason I don't think it is fair is that because there hasn't been, so far as I know, any connection between the discontinuance of the design and the fire. By putting that in evidence you give the impression that there is. I don't think that is fair.

MR. ELKIND: I am making my offer for the record, Judge.

1 THE COURT: All right.

2 (In open court)

3 BY MR. ELKIND:

4 Q Professor, can you tell me what this is, Plaintiff
5 Exhibit 20 for identification (handing)?

6 A This is the ignition switch which was inside the
7 cab. I removed this from the sister truck, truck No. 2.

8 MR. HAGAN: I'm sorry. Do you mean truck No. 2?

9 THE WITNESS: Excuse me. Truck No. 1.

10 MR. ELKIND: I offer it in evidence.

11 MR. HAGAN: I object again, your Honor, on the
12 same grounds earlier stated. Four years later. What the
13 switch in No. 1 was we don't know.

14 THE COURT: I'm going to sustain the objection.
15 It is an ignition switch and the jury knows about it, but we
16 have no way of knowing that the condition of that switch was
17 the same as the one that was involved in 1971.

18 MR. ELKIND: It is not offered for that purpose,
19 your Honor. It is just so that the record is complete.

20 THE COURT: The offer is rejected.

21 MR. ELKIND: You may inquire.

22 CROSS EXAMINATION

23 BY MR. HAGAN:

24 Q Doctor, at the time this truck was assembled -- by
25

the way, do you know when that was?

A No, I do not.

Q Do you know the year?

A It was a 1966 truck. Sometime in 1966, I assume.

Q Are you familiar with how long and for how many years General Motors had been building trucks with the tank inside the cab of the truck?

A No, I'm not.

Q Are you familiar with whether there was a difference between where you place the cab in a light, medium or heavy truck?

A I'm generally familiar with the fact that you use different locations for different size vehicles.

Q Are you familiar at all with the experience gained in World War II with respect to placement of fuel tanks in trucks?

A No, I'm not.

Q Are you familiar with where Ford placed its fuel tanks in trucks in 1966?

A In several locations. For example --

Q I'm talking about this type of truck.

A When you say "this type of truck," do you mean --

Q The kind of truck this was.

A A GMC 4000. You make several style cabs.

2 Q This type of cab, how would you describe it?

3 A This is a typical fixed cab, front engine.

4 Q Have you ever heard expressions like four and a
5 half ton, two and a half ton?

6 A Oh, yes.

7 Q What kind of cab is this?

8 A Well, you use the same cab for several different
9 size trucks. It depends on the body. I don't know pre-
10 cisely what size this one was.

11 Q Have you ever worked on a truck like that?

12 A What do you mean, "worked on"?

13 Q Well, have you ever done any mechanical work on
14 a truck like that?

15 A No.

16 Q Have you ever driven a truck like that?

17 A Yes.

18 Q Do you know what fork levers are?

19 A On a fork lift truck, yes.

20 Q Where are they located?

21 A In the front.

22 Q Well, describe for me more accurately the front.
23 Fork levers that are in the driver's compartment is what I'm
24 talking about.

25 A Driver's compartment?

1 JG 6
2 Q Well, withdrawn.

3 Do you understand that there was a dump body on
4 this truck?

5 A Yes.

6 Q Do you understand that there were certain controls
7 within the cab?

8 A Yes.

9 Q Whereby you operated the dump body?

10 A Yes.

11 Q Where do you understand those controls were
12 located?

13 A The controls -- it penetrated the floor of the
14 cab roughly in the center, near the gear shift lever.

15 Q And do those levers on the photograph generally
16 come up in a V?

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q By the way where those levers go into the floor
21 of the truck, on truck No. 1 when you inspected it was there
22 a hole in the floor there where they went through?

23 A In truck No. 1, when we examined it, there was a
24 hole cover -- the hole cover plate for the transmission was
25 gone and the levers were just coming right up through that

2 wide opening.

3 Q When did you examine truck No. 1?

4 A On May 3rd.

5 Q Now, was it still in service at that time?

6 A No, it was not.

7 Q And how long had it been out of service?

8 A I can't recall precisely.

9 Q Did you inquire?

10 A Yes, I did.

11 Q Who did you inquire of?

12 A The gentleman at the pumping station where it was
13 located. I can't recall his name.

14 Q Well, who took out the tank and the filler neck
15 from truck No. 1?

16 A Yes.

17 Q Who took them out physically? Who removed them?

18 A Oh, one of the people that were at the pumping
19 station employed by the town of Weehawken.

20 Q I see. Did you watch him remove it?

21 A Oh, yes.

22 Q And at the time, did you think it was important
23 or not to inquire as to how long it had been since the
24 components of this truck had been in use? Was this a factor
25 that you were interested in at all?

A I was principally interested in the relative locations of the parts --

Q Doctor, answer my question. If you didn't think it was important, tell me that.

A No, I didn't inquire --

MR. HAGAN: Will you reread the question, please?

(Question read)

A Yes.

Q And you were unable to find out as to when it had last been used, is that right?

A My answer was that I had inquired. I can't recall precisely, because the gentleman there did not recall precisely, how long it had been out of service.

Q Did you ask Mr. Elkind to find out this fact for you?

A I don't believe I did.

Q Now, will you agree with me, Doctor, that in an analysis such as you conducted of this situation, the more facts that you are able to establish as to the circumstances of the accident, the more confident you will ultimately be in your final decision? Would you agree with that?

A I think that is a fair statement, yes.

Q Now, in connection with your analysis in this

1 accident, did you ever see a photograph of the condition of
2 the engine of the vehicle?
3

4 A You mean --

5 Q After the fire.

6 A Yes, I have.

7 Q I said at the time you arrived at your opinion,
8 did you ever see a photograph of the condition of the engine
9 after the fire?

10 A No.

11 Q Have you seen one since you came up here to New
12 York?

13 A Yes.

14 Q Was that today?

15 A Yes.

16 Q At the time that you rendered your opinion to Mr.
17 Elkind, you had not seen one, is that correct?

18 A That's correct.

19 Q Did you know, at the time that you rendered your
20 opinion to Mr. Elkind -- by the way, when was it that you
21 rendered an opinion to Mr. Elkind as to the cause of this
22 accident?

23 A I wrote him a letter on May 5th of this year.

24 Q Now, on May 5th of this year were you familiar with
25 the fact, as testified to by Deputy Chief Lennon, who was

here with us yesterday, Tuesday, that the engine of the vehicle had suffered what he described as a terrible disintegration and that the carburetor and those portions of the fuel line leading into the carburetor were melted?

A Yes, I was aware of that.

Q And how were you aware of that?

A Because it appeared in one of the many documents that I read.

Q Well, did you state, when you rendered an opinion to Mr. Elkind, that it was reported there was fire damage to the engine compartment as well, although photographs of the exterior hood area show no extensive signs of fire damage?

A Yes. That's what I wrote.

Q Wasn't one of the bases of your opinion that the fire started in the cab your understanding, from having seen photographs of the cab, that the cab had suffered substantially more damage than the engine? Isn't that correct?

A No, it is not correct.

Q Are you saying that when you wrote that photographs of the exterior hood area show no extensive signs of fire damage that at that time you understood and were aware that the interior of the engine had been substantially damaged?

A Yes.

Q Did you have an opinion with respect to why the

2 vehicle had been low on fuel that morning?

3 A It could have been driven, in other words used
4 up the fuel.

5 Q I see. Did you know that yesterday, or perhaps it
6 was Monday, the driver of the vehicle -- let me ask you.
7 Did you at the time you rendered your report on May 5 know
8 that the driver of the vehicle, at the time he pulled into
9 that gas station, thought he had a leak in the gas system
10 somewhere?

11 A Yes. I recall reading, I think it was his
12 deposition, that he wasn't quite certain, he thought that
13 the gas gauge was coming down fast; perhaps it might have
14 been a leak. I think that's what he said. Yes, I was
15 aware of that.

16 Q Now, having a leak in the gas system somewhere --
17 when you are discussing a truck fire and discussing possible
18 causes of the truck fire, wouldn't you agree with me that a
19 possible leak in the gas system is a rather significant thing
20 you ought to take a look at?

21 A I think --

22 Q Yes or no, please.

23 A It might be.

24 Q I would ask you again, sir, listen to the question,
25 and if you can't answer it yes or no and you have to say it

1 might be, all right. But just listen to the question. I
2 think this is important.
3

4 MR. ELKIND: I object to counsel's admonition
5 to the witness, your Honor.

6 THE COURT: I think that's right, Mr. Hagan.
7 As I understand Professor Weinstein's testimony up to now,
8 he has only spoken of possibilities in any event. They all
9 have been "it might be" and he is eliminating possibilities.

10 But, in any event, you let me give instructions
11 to the witness, if any instructions are needed.

12 Q You wrote a four page report to Mr. Elind, did
13 you not?

14 A Yes.

15 Q At any point in that report or in your direct
16 testimony here did you mention the possibility of a leak in
17 the gas system which you now claim you were aware of on May
18 5?

19 A I was aware that one statement had been made --

20 MR. HAGAN: Your Honor, I ask for a responsive
21 answer.

22 THE COURT: The question was, did you mention
23 it in your report?

24 THE WITNESS: No, I did not mention it in my
25 report. I'm sorry.

2 Q In fact, in your report to Mr. Elkind, in descri-
3 ing the incident you basically said that they pulled in to
4 get gasoline because they were low on fuel, isn't that right?

5 A Yes.

6 Q And are you telling us now, sir, that when you
7 wrote that comment and failed to indicate in your report that
8 you were aware that someone had said they thought they had
9 a leak in the system, that you didn't think that was signifi-
10 cant enough to put in your report when you were looking for
11 the possible causes of a gas fire?

12 A If I may give my answer --

13 Q I think that question can be answered yes or no.

14 A May I give the answer as I see it?

15 MR. HAGAN: Your Honor, I would like the witness
16 to be responsive. He is under cross examination and I think
17 my question is understandable.

18 THE COURT: All right. I agree. But it does
19 appear to me that I am not going to limit the witness to yes
20 or no answers if he feels that he has a need for a fuller
21 explanation. I think he is entitled to that.

22 But you can answer it yes or no and then you can
23 make whatever explanations --

24 THE WITNESS: I am not being evasive because I
25 think it is important --

THE COURT: No. The question is yes or no and then I'll allow you to make further explanations.

MR. HAGAN: May we have the question reread before he answers it?

THE COURT: Read it back.

(Question read.)

THE WITNESS: The precise answer is no, I didn't think it was important. And if I may explain --

THE COURT: Yes.

THE WITNESS: -- if the leak was in that part of the fuel line that was within the cab of the truck, yes, it was important, and I covered that as one of the possibilities.

If, however, the leak was in part of the fuel line that was outside the cab, then it was unimportant in terms of a fire within the cab, in my opinion.

Q Didn't think it was important even to discuss, just as you told us now, in your report, just the way you did it now, that you understand there was a leak but that wasn't significant because of A, B, C? Wouldn't you expect to put that in your report?

MR. ELKIND: I object to the form of the question.

THE COURT: I am going to sustain the objection.

Q Isn't it a fact, Doctor Weinstein, that at

1 the time you wrote this report on May 5th you were not aware
2 that Mr. Brennan said he had a leak in the gas system?
3 Now, isn't that the truth?
4

5 A No, it is not.

6 Q All right. Point out to me in Mr. Brennan's --
7 where did you see this information that Mr. Brennan said
8 this? Was it in his deposition?
9

10 A I can't recall precisely the location.

11 Q Well, I would like you to tell us now where
12 you found that information.

13 A I believe it was in a deposition or perhaps in
14 a report --

15 MR. ELKIND: In a report.

16 MR. HAGAN: Mr. Elkind I don't think should be
17 talking to the witness at this time.

18 THE COURT: All right.

19 MR. ELKIND: To save time.

20 MR. HAGAN: Your Honor, I ask that he be instructed
21 not to talk to the witness here.

22 THE COURT: I don't have to give you that instruc-
23 tion, Mr. Elkind. You know better.

24 THE WITNESS: I can't recall the precise location,
25 but I was aware of it.

Q I'm sorry, Professor. I would ask you please.

1 This is a very important point. I want to know, in the
2 materials you described for us when you were on the stand,
3 all the things you knew about this, I want you to tell me
4 where you found out that Mr. Brennan said there was a leak
5 in the gasoline or in one of the gas lines.
6

7 A I can't recall the precise location. It was either
8 in Mr. Brennan's deposition or in a report by -- I don't
9 know whether it was Mr. J. Storm or one of the supervisors.

10 Q Do you have the Storm report there?

11 A I returned some material to Mr. Elkind.

12 Q Wait a second. I'll be glad. Do you want to look
13 at the Storm report? It is Exhibit A. Would you like to
14 look at it?

15 A If that contains the information, yes.

16 Q Well, I'll ask you if it contains it. Take a look
17 at it (handing).

18 A No. All he says is that he needed a half tank of
19 gas. About a half mile from Secaucus Road he noticed that
20 the gas gauge was dropping very fast. That is not the
21 matter I have reference to. I cannot recall precisely.

22 Q All right. I would ask you, Doctor, if you would,
23 please, this evening would you find for us -- you will have
24 time to look over your papers -- the point you are talking
25 about in your various papers where you found out that Mr.

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1 Brennan said he thought he had a leak in the system when he
2 was coming into that gas station?
3

4 A Yes, I will.

5 Q Will you do that for us?

6 A Yes.

7 Q Thank you.

8 Was it your understanding -- withdrawn.

9 What was your understanding, Doctor, when you were
10 coming to your conclusion here and coming to your
11 determination that there were fumes inside the cab, which
12 I gather was your determination? What was your understanding
13 with respect to whether any of the doors of the cab had
14 been opened or closed while they were in the gas station?

15 A What was my understanding with regard to whether
16 the doors were opened or closed?

17 Q Right.

18 A I believe Mr. Brennan's deposition said that he got
19 out to pay the attendant at the pump and then got in and
20 closed the door. I believe he might have indicated that
21 the window was open. These are the only two references
22 that I could find.

23 Q Well, am I correct then that when you came to
24 your conclusion which you embodied in your report to Mr.
25 Elkind it was your understanding that Mr. Brennan while

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1 paying for the gas had opened the left side door to pay
2 for the gas? Is that correct?
3

4 A I say that would be part of my entire conclusion.

5 Q Just answer --

6 A Did I consider it?

7 Q All I want to know is what did you understand?

8 A I understand that either the window was opened and/
9 or the door was opened and closed sometime during or immed-
10 iately after the filling operation.

11 Q Didn't you say in your report, when you were
12 describing the facts of the accident, "After returning
13 to the cab the driver turned on the ignition switch"?

14 A Yes.

15 Q All right. So it was your understanding that the
16 driver had been out of the cab; isn't that correct?

17 A Yes, of course.

18 Q Now, with your knowledge of gasoline fumes,
19 is it your testimony here that the cab -- well, withdrawn.
20 Let me ask it another way.

21 Where were these gasoline fumes as you
22 understand this situation? At the time the ignition key
23 was turned and caused this accident, where were these fumes?

24 A There had to be fumes in the vicinity of the
25 ignition switch on the floor of the cab, up under the dash.

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Q Will you be a little more descriptive of that?

Are these fumes which will disperse in the air or do they move around in a small cloud or would they tend to drift away? Will you describe that a little more?

A Well, gasoline vapor is heavier than air.

Q Right.

A About three or four times heavier than air. So the gasoline vapor tends to fall to the ground. However, there is a natural convection and diffusion of vapors, which means that even a heavier vapor can rise by natural diffusion and convection. In addition, small wind currents generated by motion of people can cause them to diffuse over a large area.

Q Such as opening or closing a door? Would that have any effect at all on these fumes?

A It could.

Q Wouldn't you agree it might tend to cause them to disperse?

A Not necessarily.

Q Isn't it true that meaning heavier than air, if these fumes were in a cab of that truck and you opened the door, they would tend to roll out that door just like water? Being three to four times heavier than air, and opening that side door, they would tend to just roll

2 out?

3 A No.

4 Q You wouldn't agree with that. Was it your under-
5 standing, Doctor, that there was no way for an engine fire
6 to come into the cab of that truck? Is that the theory under
7 which you were operating?

8 THE COURT: What was the question? Sorry.

9 MR. HAGAN: Was it his understanding at the time
10 he prepared his report to Mr. Elkind that -- withdrawn.
11 Let me rephrase it.

12 Q Was it one of the bases of your report and your
13 opinion that this couldn't have been a fire starting in the
14 engine because it couldn't have gotten into the cab, there-
15 for it wasn't an engine fire? Was that one of the bases
16 of your opinion?

17 A May I inquire? Was it --

18 MR. HAGAN: Your Honor --

19 THE WITNESS: Let's be precise now. You are
20 talking technological terms. I have to know what your
21 assumptions are.

22 MR. HAGAN: I ask for a responsive answer from
23 the witness. I don't believe the question is that
24 technological.

25 THE COURT: I am in no position to know.

1 You mean you can't answer the question as it has
2 been phrased?

3 THE WITNESS: I can answer a question that I
4 can interpret from his generalized statements, yes, I could.

5 MR. HAGAN: May we have the question reread, your
6 Honor?

7 THE COURT: All right.

8 (Question read.)

9 MR. ELKIND: Let me note an objection to the
10 form of the question, your Honor.

11 THE COURT: All right.

12 THE WITNESS: Could the engine fire --

13 MR. HAGAN: Your Honor, I ask for a response to
14 the question. I think it may not be the most artful --

15 THE COURT: Professor, answer the question.
16 And since you indicate that it is generalized, when
17 you are answering it indicate specifically what you are
18 answering. I think that is the best I can do for you.

19 THE WITNESS: All right. Fine.

20 A I believe that particles, ignited particles, could
21 have come through from an engine fire into the cab, yes.
22 If that's what you mean by fire coming in, yes, I would agree.
23 A fire in the cab could have come either from flame shooting
24 through a hole or lighted particles or stuff burning
25

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2 through a couple of the holes; yes, if that's what you mean
3 by engine fire.

4 But that would not have produced this flame
5 emerging from under the dash across the entire width of
6 the the cab. That's why I'm trying to be more precise.

7 Q In analyzing whether a flame had come under the
8 cab in the way you just described, across the whole front,
9 all the way up, did you analyze the injuries that the left-hand
10 seat passenger, Mr. Brennan, and the right-hand seat
11 passenger, Mr. Ollert, had received in coming to your
12 conclusion about whether that was an accurate description
13 of the fire?

14 A I had inquired as to the extent of their injuries
15 and I was informed that their injuries consisted of burns
16 to both their face and their hands.

17 Q Did you understand the severity of the injuries
18 to Mr. Brennan or Mr. Ollert compared with the injuries
19 to Mr. Hughes?

20 A Yes, I was aware of that.
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Q Were you aware that Mr. Brennan and Mr. Ollert on the day of the accident were treated at the emergency ward and were released?

A Yes.

Q Now, did that have any effect in your thinking on how much credibility you gave to that kind of a description of a tremendous cloud of flame coming all the way across from left to right?

MR. ELKIND: I object to that question as being argumentative.

THE COURT: No, I think that is proper cross-examination particularly of an expert witness.

You may answer.

THE WITNESS: Would you repeat the question?

(Question read.)

MR. ELKIND: I object to the form of the question also, particularly because he put in this business about left to right.

MR. HAGAN: I mean covering left to right.

MR. ELKIND: I don't know where that came from.

THE COURT: As I understand the testimony, he said it filled the whole area.

MR. ELKIND: Yes.

THE COURT: I don't think there is any difference.

1
2 It is the same.

3 Will you answer it?

4 A Yes, I did give it credibility, but, of course,
5 you have to remember that Mr. Hughes was in the middle and
6 he was the last one to get out. Burns are a function of
7 time exposure to the flame, so that Mr. Ollert and
8 Mr. Brennan got out first and they may have been subjected
9 to less burning by Mr. Hughes, who was in the middle.

10 Q Also subject to the interpretation that the
11 predominant source of fire was in the middle; isn't that
12 right?

13 A I think that is probable.

14 Q It is subject to that interpretation?

15 A I'm saying that one has to compare the probabilities.

16 Q Do you agree when three passengers are sitting in
17 a cab and two of them on both sides get out with minor burns
18 who are treated and released, and the center passenger is
19 severely burned, that is subject to the interpretation that
20 the source of the fire is in the center?

21 A As I say, one has to weigh that consideration
22 versus the speed of heat with regard to the other two
23 parties. You have to couple that with their own description,
24 because we have nothing there that tells us other than what
25 they have said and their own burns, so I am saying the fire

1 might have been more intense toward the center because,
2 after all, the ignition switch was closer to the center than
3 it was to the side so the flame may have started there and
4 may have been more intense and then flashed out this way.
5

6 Q The main point is where the vapors were rather
7 than where the ignition switch was because once the vapors
8 were ignited, isn't that true, the flames would spread to
9 the other vapors?

10 A It takes time.

11 Q Can't you answer that question?

12 THE COURT: I think he has answered the question.

13 MR. ELKIND: I object to the form.

14 THE COURT: You listened to his answer. He
15 said "It takes time."

16 Q How fast is the speed of movement of fire on gas
17 vapor?

18 A It varies anywhere from half a foot per second to
19 several thousand foot per second. It depends on the
20 concentration of the vapors, the pressure, the temperature,
21 the source of ignition.

22 Q What was your opinion as to this fire?

23 A It was not an explosion, therefore the speed of
24 propagation of flames was probably of the order of maybe
25 several feet per second to 30 or 40 feet per second. It is

hard to judge precise speed.

Q What do you mean it was not an explosion?

A An explosion is such a rapid release of energy that the whole truck would come apart.

Q Have you read any of the testimony of the witnesses that have appeared here in the last few days who described the beginning of this fire like a firecracker with a loud pop; have you been told about that?

A Have I been told about that? No.

Q Were you aware of that kind of description at the time you made your report on May 5?

A Was I aware of that? What I was aware of was the description of "whoosh," a sudden noise and the flames emerging from under the dash. If that is equivalent to noise like a firecracker, then, yes, I was aware of it.

Q Are you aware of the fact that one of the witnesses specifically described it as like a firecracker?

A If it was like a firecracker it would not have been an explosion. If it had been an explosion --

Q I am just asking you this: Were you aware of it? Just listen to the question, please.

A I was not aware of that terminology.

Q Are you saying that based on your analysis of the fire at this time it moved 30 or 40 feet per second?

1 A I say I'm not certain how rapidly. It was
2
3 certainly less than the speed of an explosion.

4 Q I know you are not certain, but that has not
5 stopped you from rendering earlier opinions today, so give
6 me your best probability of an estimate on the speed of the
7 fire.

8 A Probably of the order of several feet per second.

9 Q Several feet per second?

10 A Yes.

11 Q How wide would you say that cab is; do you know?

12 A It is approximately five feet wide.

13 Q Are you saying it took five seconds for the cab
14 to fill with flame?

15 MR. ELKIND: Please, your Honor, I object to
16 that as rank misstatement of the witness' testimony. He
17 said several feet per second.

18 MR. HAGAN: I'm sorry. All right, I will amend
19 that. I misread several feet per second.

20 Q How long in your opinion did it take for that cab
21 to fill with flame?

22 A A brief time, maybe one, maybe two seconds.
23 have no real way of knowing.

24 Q Did you consider it important to understand how
25 the two outside passengers had gotten out of the cab?

1
2 A Yes.

3 Q How did you understand that the right-hand
4 passenger had gotten out?

5 A I understood that he had to break the window to
6 release the door handle.

7 Q Then what did he have to do?

8 A Reach outside.

9 THE COURT: He just said he broke the window to
10 release the door handle.

11 MR. HAGAN: I'm sorry.

12 Q Combining that fact, Doctor, with the fact that
13 he was not seriously burned and was released from the
14 emergency ward, did that cause you --

15 MR. ELKIND: I'm going to object to that because
16 there is no evidence that he was released from the emergency
17 ward. Counsel has said that, but there is no evidence on
18 that subject.

19 THE COURT: Which one is that?

20 MR. ELKIND: Oldert. There is no evidence that
21 these two men were released from the emergency ward.

22 MR. HAGAN: I believe, your Honor --

23 THE COURT: Mr. Elkind, come up. We will hold
24 that question.

25 (At the side bar.)

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(In open court.)

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MR. HAGAN: Will you read back the question I

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asked him so that I can reorient myself?

17

THE COURT: The question was: Were you aware

18

that Mr. Ollert was released from the emergency room?

19

MR. HAGAN: Yes.

20

Q We were talking about Mr. Ollert's problems in

21

getting out of the right-hand door, how he had to break the

22

window, reach out and open the door, and I asked you if you,

23

in determining the severity of the fire across the whole

24

front of the cab, as you described it, related the amount

25

of time Mr. Ollert took to get out of the cab with the fact

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that he was released from the emergency ward that same day?

A Was the beginning of the question "Were you aware"?

Q Were you aware?

A I believe I was, yes.

Q When you learned that both of the outside passengers had gotten out of the cab, one of them having quite a bit of trouble getting out his side and head not been seriously burned enough to be kept even at the emergency ward, did that cause you to question the accuracy of the description of how the fire occurred?

MR. ELKIND: I object to the form of the question.

THE COURT: I will overrule the objection.

A No, it did not.

Q Were you aware when you rendered your report to Mr. Elkind on May 5 that when the men stopped for gas that morning that, according to the driver, Mr. Brennan, this was the first time in five years of driving that truck that he had stopped for gas?

MR. ELKIND: Objection, your Honor. I don't see how that could possibly have any relevance to this. It is just argumentative. He is trying to state facts to the jury and make an argument from questions.

THE COURT: That objection is overruled.

Were you aware of it?

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THE WITNESS: No, I was not aware.

Q Would you agree with me on the following points:
That what burns in a gasoline fire is the vapor?

A Yes.

Q Not the liquid itself?

A That is correct.

Q And that the vapor in order to burn in the air has
to be within the air in a percentage that is between
approximately 1.4 percent and 7.6 percent?

A Approximately.

Q And that if it is less than 1.4 percent it is
basically too lean to burn and above 7.6 it is too rich;
isn't that correct?

A Yes.

Q If we say that 1.4 percent in the atmosphere is
equivalent to, say, 14,000 parts per million, which I think
you would agree with, 1.4 percent is equivalent to 14,000
parts per million -- would you agree to that?

A 14,000, you said?

Q I hope my math is correct.

A I think you are a little off. It is 14,000 parts --
yes.

Q 14,000 parts per million?

A Yes, per million.

Q It has to be at least that concentration to ignite under normal circumstances; isn't that right?

A Yes.

Q Now, do you have any knowledge of how heavy the concentration must be before you can smell gasoline?

A No, I do not.

Q Do you have any opinion as to how many parts out of the million would have to be present in the air to smell gasoline?

A No, I do not.

Q Would you have any opinion as to the severity of the smell or odor of gas vapor once you reached the 14,000 parts per million area?

A I don't know how to measure severity of odor. No, I do not.

Q Would you answer me this: Would you characterize the smell of gas vapor at the bottom level of flammability limits, 14,000 parts per million, as a strong, pungent odor; would you agree with that?

A If your nose were at that concentration, yes, I would imagine it would.

Q Doctor, you are here testifying as an expert and I asked you that earlier, whether you considered yourself an expert on gasoline. You told us about these analyses

1 mcpd 11

Weinstein - Cross

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2 you have done and you --

3 MR. ELKIND: I object to this.

4 THE COURT: The objection is sustained, Mr. Hagan.
5 You are not to testify. Ask questions.

6 Q Are you telling us, Doctor, that you really are
7 unable to give the jury an opinion as to whether, if they
8 were in a car or a truck or in that room and present in the
9 air was sufficient gas vapor to ignite, that is, 14,000
10 parts per million, are you not able to tell his Honor and
11 the jury whether or not they would sense a strong odor of
12 gasoline in that room?

13 A I think they would if that 14,000 parts per
14 million were in the vicinity of their nose.

15 Q That is what I am assuming, because I'm assuming
16 they are in the room with the gas.

17 A Oh, but, as we know, as the gasoline vapor settles
18 the concentration will vary. It may be 1.4 percent at the
19 ignition switch and it may be one-thousandths of one percent
20 by their nose.

21 Q Let's move to an automobile. We are in the cab
22 of a truck. Is it your opinion, Doctor, that if you were
23 sitting in the cab of a truck or in your own automobile and
24 in that vehicle the concentration of gas vapor was heavy
25 enough, 14,000 parts per million, to support combustion,

mcpd 12

Weinstein - Cross

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that it could be done at the floor and you wouldn't be able to smell it?

A I'm not saying that.

Q What are you saying?

A I'm saying, yes, when you are in a gasoline station you smell gasoline.

Q That is not what I am asking you. You are in your own car and in the car is 14,000 parts per million of gasoline, because that is the minimum. It could be more. It could be up to 76,000 parts per million and would ignite. I am giving you the lowest level, 14,000, and I am asking you, sir, are you telling me now that you wouldn't smell that gasoline very strongly in that car?

A I think I have answered that. You may or may not.

Q What is your answer?

A It depends on where that 14,000 parts per million is located.

Q Have you ever done any experiments with gasoline vapor to ascertain by igniting the vapor and smelling the vapor whether there would be any --

MR. ELKIND: I object to that, your Honor. The question answers itself. If he were smelling it and igniting it he wouldn't be here.

MR. HAGAN: Not on fire.

1 mcpd 13

Weinstein - Cross

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2 MR. ELKIND: How do you ignite it without putting
3 it on fire?

4 Q Have you ever done any experiments, Doctor, with
5 gasoline to determine the relationship between the ignition
6 factor of the vapor and the strength of the smell?

7 A No, I have not.

8 Q Have you read any studies in that area?

9 A Not on the olfactory factors involved in follicle
10 mixtures, no, I have not.

11 Q Isn't it true, Doctor, that gas vapor, even in a
12 gas station when we pull in to get gas, is very strong,
13 isn't it?

14 A Occasionally, yes.

15 Q And it lasts for a long time, doesn't it?

16 A Occasionally.

17 Q When did you take this out of the truck?

18 A May 3.

19 Q And you don't know the time gasoline was put in
20 it, but you do know that it was out of service at that time;
21 isn't that right?

22 A The gasoline tank was approximately a third full
23 when we took it out.

24 Q That is two weeks ago?

25 A Yes.

1
2 Q Will you tell me whether you smell any gasoline
3 in there?

4 A Yes, there is a residual smell.

5 MR. HAGAN: This is an exhibit in evidence, which
6 I will hand to the jury. This is a question now, a very
7 important point in the case, and I ask you whether you can
8 smell gas vapor.

9 MR. ELKIND: I object to this speech. I don't
10 object to the jury smelling it.

11 (Pause.)

12 Q Doctor, when you rendered your opinion on May 5
13 to Mr. Elkind were you aware that all three of the
14 passengers in the truck had testified during their deposi-
15 tions that they did not smell any gas vapor in the truck
16 just prior to the fire?

17 A Yes.

18 Q Now, Doctor, do you believe if you had some
19 gasoline, the vapors were rising from the gasoline, you
20 would be able as an expert in this field to demonstrate to
21 his Honor and the jury simply by pointing with your finger
22 the area where the vapors are rising from the gasoline and
23 where, if one ignited it, you'd get the flame; do you
24 believe you would be able to do that approximately?

25 A No, I do not.

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2 Q Do you see this vial here?

3 A Yes.

4 MR. HAGAN: Your Honor, I would like to ask the
5 witness whether he can identify this.

6 THE COURT: Why don't we give it a number so we
7 know what we are talking about?

8 MR. HAGAN: Mark this for identification.

9 (Defendant's Exhibit H marked for identification.)

10 MR. ELKIND: Objection, your Honor. I don't see
11 the relevance of it. If counsel wants to tell us what it
12 is, let him do it.

13 MR. HAGAN: I would be delighted to tell you.
14 I think on cross-examination of an expert in this area I am
15 able to explore certain aspects of this and test his
16 knowledge.

17 MR. ELKIND: I object to that.

18 THE COURT: I will see you at the side bar.

19 (At the side bar.)

20 THE COURT: I don't understand what his ability
21 to recognize or not recognize that liquid has to do
22 with his expertise.

23 MR. HAGAN: I think it is important to have before
24 the jury the physical evidence we are dealing with here and
25 the physical evidence as to whether gasoline smells and what

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Weinstein - Cross

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1 the intensity is, and because everybody knows you go into
2 a gas station, you smell gas, but what nobody knows, includ-
3 ing myself before the case started, was how strong is the
4 concentration before it will flash. That is what we have
5 got in this case. Their claim is that inside that cab
6 everybody said nobody smelled anything.

7
8 THE COURT: Your theory is --

9 MR. HAGAN: Had it been there they would have
10 smelled it and it would have knocked them out.

11 THE COURT: And that whether or not he can
12 identify that, what is in that vial, will have some bearing?

13 MR. HAGAN: It will bear also on when my expert
14 comes on.

15 THE COURT: All right, I will allow it.

16 MR. ELKIND: Note my objection, please.

17 (In open court.)

18 THE COURT: I'm overruling the objection.

19 Q All I want you to do now is tell me whether by
20 your sense of smell you can identify the material, the
21 liquid, in this vial marked Defendant's Exhibit H for
22 identification.

23 A Yes, it resembles a light hydrocarbon gasoline,
24 possibly. I can't really be precise.

25 Q I would like to explore that. Are you saying

1 that you cannot tell from your sense of smell that
2 Defendant's Exhibit H is definitely gasoline; is that your
3 testimony?
4

5 A Yes, that is my testimony.

6 Q Let me pose a hypothetical to you, Doctor: Will
7 you assume with me for a moment that it is gasoline. Now,
8 as to the odors you smell, whatever they may be, I would
9 like you to identify for his Honor and the jury whether in
10 your opinion as an expert on the combustion of vapors, I
11 believe, the combustion point of these vapors is by pointing
12 to the area above the opening, that is a half inch, an inch,
13 six inches. I want you to identify where in your opinion,
14 if I had a match here and I hold it a foot over it, a half
15 inch, where would it be that in your opinion I would ignite
16 the vapors?

17 MR. ELKIND: Objection, your Honor.

18 THE COURT: The objection is overruled. That
19 is on the assumption that that is gasoline.

20 Q Yes, on the assumption it is gasoline.

21 THE COURT: The objection is overruled.

22 A I responded earlier to that same question.

23 Q Would you like to come down? I ask that you do
24 it down here. Take as much time as you want smelling it
25 and then point to an area above this vial as to where you

1 believe it would ignite.

2 A I said I couldn't do it. I don't know by smell
3 alone where the concentration is, approximately, the
4 flammability limits.
5

6 Q Doctor, you are here testifying in a case which
7 involves the question --

8 MR. ELKIND: Objection.

9 Q Could you even do it approximately, Doctor?

10 A No, I said I couldn't.

11 Q Let me try it this way. Assuming that that is
12 gasoline and it is a vial, do you agree with me that is
13 about four inches high, about an inch and a half in diameter
14 at the opening of the vial; does that look about right?

15 A Yes, approximately.

16 Q Assume with me that that is gasoline and I took a
17 match and I held it six inches over that opening, in your
18 opinion would I ignite the fumes rising from what I ask you
19 to assume is gasoline?

20 MR. ELKIND: Objection to the form of the question,
21 particularly the statement about fumes rising. The testimony
22 in this case has been that gasoline vapors are heavier than
23 air. He is asking the professor to assume a fact that can't
24 possibly exist.

25 THE COURT: The witness can answer. He is asking

1
2 him questions. He can answer.

3 A I do not know whether it would ignite if you held
4 a match six inches from the mouth of the jar.

5 Q Do you know whether it would ignite if I held a
6 match a foot above the jar?

7 A I do not know.

8 Q Do you know whether it would ignite if I held a
9 match two feet above this jar?

10 A I do not know.

11 Q Do you know whether it would ignite, and this is
12 the last question I will ask you on this, three feet above
13 that jar in a direct line, that is, I strike a match. Do
14 you know whether I would ignite the fumes?

15 A I do not.

16 MR. HAGAN: Thank you. Your Honor, I am going
17 to another area now. I will need some time more of this
18 witness.

19 THE COURT: That is all right. You will use
20 the 10 minutes. We have 10 minutes. Use it.

21 Q Doctor, do you consider yourself an expert in the
22 ignition systems of trucks and automobiles?

23 MR. ELKIND: Objection.

24 THE COURT: The objection is sustained. Ask him
25 directly.

1
2 Q Are you an expert on the ignition systems of
3 trucks and automobiles?

4 A I know enough about them to know how they function
5 yes.

6 Q Will you itemize for his Honor and the jury the
7 number of possible sparks that occur in the ignition system
8 and where they occur when a person normally turns the key in
9 the ignition? As you mention each one, if you just say
10 where that is I would appreciate it.

11 May I withdraw that for a moment? I think it
12 would be easier to do this in this way. I will withdraw
13 the question.

14 MR. HAGAN: May I have this marked for identifi-
15 cation, please?

16 (Defendant's Exhibit I marked for identification.)

17 Q May I ask you, Professor, whether you can identify
18 Defendant's Exhibit I for identification, please?

19 A This is Sketch B. I have seen this sketch before.

20 Q Did you have this available to you when you were
21 preparing your report for Mr. Elkind?

22 A Yes.

23 MR. HAGAN: I offer Defendant's Exhibit I for
24 identification into evidence. It is a sketch prepared by
25 General Motors in this case in response to a request from

1 the plaintiff to describe the routing of the ignition system
2 in this truck. I offer it in evidence.

3
4 MR. ELKIND: No objection.

5 (Defendant's Exhibit I received in evidence.)

6 Q Professor, will you come down, please, and stand
7 at the board? I will give you this red marking pencil and
8 I will ask you on that diagram to mark the location of the
9 various sparks in the ignition system during the normal
10 starting procedure. You can go in any direction you want
11 as you mark the diagram. Please identify for the record
12 what you are marking and where it is located.

13 A Yes, I think I can identify those points.

14 Q By the way, let me add a few things. Assume that
15 it is not raining or that it is not dark, so you don't have
16 your lights or windshield wipers on.

17 A All right. The spark occurs when you have two
18 terminals of a switch or something resembling a switch and
19 you have to pass current through the switch, so that the
20 sources that we have inside the cab -- we really have only
21 one that is connected with the ignition switch.

22 Q Put a circle around it, please. Just follow along,
23 Doctor, if you would.

24 A Yes. Of course, these spark plugs by definition --
25 that is how it is ignited.

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Q Couldn't you just draw a circle around each spark?

A Yes.

Q Maybe my eyes are going on me because I can hardly see those.

A In the distributor, if the generator is turning then there will be arcing at the brushes.

Q Right.

A And there are relays. This is a typical relay. Where the relay closes there will be a spark. There are other relays.

Q Which relay did you just circle?

A The one that is -- that may be -- I can't tell because this schematic doesn't show the placement, the relay showing --

Q The generator relay?

A This is at the generator.

Q I'm sorry to interrupt you. Go ahead. I think you mentioned the generator brushes, did you?

A Yes.

Q Go ahead.

A There was also the starter which has a relay associated with it.

Q Where is that?

A Around here somewhere.

1 Q Why don't you put a circle around that. Is the
2 starter only on one spark; does it have several sparks
3 associated with it?
4

5 A I'm not certain. It depends whether it is
6 sparking on the pull-in coil or the holding coil. You
7 know, I can't be certain whether you even will get a spark
8 sometimes.

9 Q What are the potential sources of spark in the
10 starter to listen for?

11 THE COURT: Are you through with this diagram?

12 MR. HAGAN: We haven't finished with the circles
13 yet.

14
15 (Continued on Page 452)
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Q Would you list the possible sources of spark in the starter, please?

A In the starting motor?

Q Yes.

A There is a solenoid --

Q Right.

A -- in there. And of course there are --

Q Brushes?

A -- terminals that close. Right, there are brushes in the motor.

Q Right. So would you put a 2 inside that circle to identify two sparks for that one?

A (Marking).

Q When you put a circle around the distributor cap, which spark were you intending to circle?

A Well, you can get a spark across the points.

Q All right. That's one. And where else could you get a spark?

A And across each time the cam comes over the contact for each of the plugs.

Q All right. And the rotor?

A Yes.

From the rotor to the contact points for each plug.

Q Any other sources of spark now that you haven't

jgrf 2

Weinstein-cross

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1 circuled on that diagram?

2 A There may be.

3 Q Can you get a spark from the battery terminals?

4 A Unless there is something lying across the terminals
5 there should not be a spark there.

6 Q Are you pretty well finished there, Doctor?

7 A For the elements that I've indicated, yes.

8 Q How many sources of spark have you circled
9 inside the cab?

10 A One.

11 Q How many sources of spark have you circled in the
12 engine compartment, including the two for the starter?
13 Will you add them up?

14 A Oh, 18 or so, 18 to 20.

15 Q Thank you.

16 THE COURT: All right.

17 We will now adjourn until tomorrow morning at
18 10:00 o'clock. And remember, don't talk about this to
19 anyone, ladies and gentlemen. I'll see you tomorrow at 10:00.

20 (Adjournment was taken to Thursday, May 22,
21 1975 at 10:00 a.m.)
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RICHARD HUGHES,

- v s -

72 Civ. 1811

GENERAL MOTORS CORPORATION.

May 22, 1975

[10:00 a.m.]

[Trial resumed; jury present.]

A L V I N S . W E I N S T E I N, resumed.

CROSS-EXAMINATION [continued]

BY MR. HAGAN:

Q Doctor, did you check that point for me last night by reviewing the materials that you had at the time you rendered your opinions to Mr. Elkind on May 5 as to where in those materials you learned that Mr. Brennan, the driver, thought he had a gas leak?

A Yes.

Q Where was it that you had seen that?

A It was a collection of information in several places. You used the stipulation that Mr. Brennan thought he had a leak. I was talking in general about the possibility of leaks someplace in the gas line.

As I mentioned yesterday, Mr. Storm's report contained an implication of the possibility of a leak. On Page 44 of Mr. Hughes' deposition Mr. Elkind asked the

2 question did he think there was a leak, and Mr. Hughes
3 answered no.

4 Then in Mr. Avella's deposition at Page 21 in
5 the middle and bottom there were questions: If there were
6 a leak in that fuel line, on Page 22, asking --

7 Q You better identify who Mr. Avella was.

8 A Mr. Avella, I believe, is one of the owners of
9 the High Point Garage. On Page 22 of Mr. Avella's deposi-
10 tion:

11 "Q Did you examine the engine afterwards to
12 determine whether or not there was a leak?"

13 In the deposition of Mr. Hubbard, who was a
14 GM engineer --

15 Q You just read the question to us from Mr. Avella's
16 deposition. What was the answer?

17 A He did not examine the engine.

18 Q Then that question and answer, sir -- are you
19 saying that when they asked Mr. Avella whether he examined
20 the engine for a leak and he said no, that that was informa-
21 tion which led you to believe that the driver thought he had
22 a leak?

23 A No.

24 Q Is that what you are saying?

25 A No.

Q Do you understand what I am trying to get out of you?

A May I continue, if you don't mind? I am trying to suggest where it was in the various materials that I read that suggested that there might be a possibility of a leak in the gas line, someplace from the tank to the engine.

Q But that isn't what you testified yesterday, sir, I don't believe, and let me review it again. I believe yesterday you testified that at the time you rendered your report on May 5 to Mr. Elkind you were aware that Mr. Brennan, the driver, thought that he had a gas leak. Isn't that what you testified yesterday?

A I think what I testified to was that I had considered the fact that there might have been a gas leak someplace in the fuel line. Whether it was precisely from Mr. Brennan's statement or not, I don't believe --

Q Let me try to refresh your recollection, sir, by reading to you from yesterday's transcript, Page 417, Line 5, and this was on cross-examination by me:

"Q I see. Did you in that report yesterday or perhaps it was Monday say the driver of the vehicle -- let me ask you: Did you at the time you rendered your report on May 5 know that the driver of the vehicle at the time he pulled into that gas station thought that he had

2 leak in the gas system somewhere?

3 "A Yes, I recall reading -- I think it was
4 his deposition that he wasn't quite certain. He thought
5 that the gas gauge was coming down fast. Perhaps it might
6 have been a leak. I think that is what he said. Yes, I
7 was aware of that."

8 Then again at the bottom of Page 420 I said to
9 you:

10 "Q Isn't it a fact, Dr. Weinstein, that at
11 the time you wrote this report on May 5 you were not aware
12 that Mr. Brennan said he had a leak in the gas system?
13 Now, isn't that the truth?

14 "A No, it is not."

15 Then I remember I asked you to point it out to me
16 and I showed you Exhibit A, Mr. Storm's report, and you said,
17 "No, it wasn't the Storm report."

18 Now, do you remember all that?

19 A I think if you will read that, at the end of
20 that reply I said it is there by implication. I recall
21 that was my statement.

22 Q Let's check that out. That was at Page 422:

23 "Q Do you have the Storm report there?

24 "A I returned some material to Mr. Elkind.

25 "Q Wait a second. I'll be glad -- do you

want to look at the Storm report? It is Exhibit A. Would you like to look at it?

"A If that contains the information, yes.

"Q Well, I'll ask you if it contains it. Take a look at it.

"A No, all he says is that he needed a half tank of gas. About a half mile from Secaucus Road he noticed that the gas gauge was dropping very fast. That is not the matter I have reference to. I cannot recall precisely."

Does that refresh your recollection as to what you testified yesterday, doctor, having had the transcript read to you?

A I recall using the phrase "it is there by implication," but maybe it wasn't picked up. In any event, let me indicate --

Q There is no question before you. I'm just asking you, sir, whether reading that testimony to you now, the way you testified yesterday, refreshes your recollection that yesterday you said that when you rendered the report on May 5 to Mr. Elkind you were aware that Mr. Brennan, the driver, thought he had a gas leak.

Does that refresh your recollection of what you testified to yesterday?

1 6 mcsr
2 A Yes.

3 Q I asked you to check out the material where in
4 your materials you found that Mr. Brennan had a gas leak
5 or thought he had a gas leak. Would you direct your atten-
6 tion, sir, to that point, Mr. Brennan thinking he had a gas
7 leak at the time he came into the gas station? Now, please
8 tell us what materials you relied on to support that thought.

9 A I found nothing to support the thought that Mr.
10 Brennan thought he had a gas leak, other than the implication
11 in Mr. Storm's report.

12 Q Which yesterday you said you were not relying
13 on; is that right?

14 A Pardon me?

15 Q Which yesterday you said you were not relying
16 on; isn't that right?

17 A Not --

18 Q Would you like me to read it again?

19 A Not in its entirety. I wonder if I could --
20 excuse me.

21 Q I'm sorry, doctor. Are you claiming that the
22 Reporter didn't transcribe you correctly yesterday?

23 A I can recall making the statement by implication,
24 but --

25 Q Doctor, I will ask you once again, isn't it a

1 fact that on May 5 when you rendered your report to Mr.
2 Elkind about what you considered was the cause of this fire,
3 you were not aware that Mr. Brennan, the driver, believed
4 he had a gas leak in that engine; isn't that true?
5

6 MR. ELKIND: May I note an objection, sir, and
7 point out that the issue that counsel is inquiring about is
8 entirely irrelevant to anything in this case?

9 THE COURT: Your objection is overruled.

10 Q Would you like the question reread, Mr. Weinstein?

11 A Yes, would you read it, please?

12 [Question read.]

13 A I was not aware precisely that Mr. Brennan had
14 suggested a gas leak. I was aware of the possibility of
15 a gas leak someplace in the line as a possible source of
16 gasoline vapors.

17 Q And yet you didn't mention it once in your report
18 to Mr. Elkind; isn't that true?

19 A I mentioned --

20 Q Can you answer it yes or no? If you did, tell
21 me where you mentioned it.

22 A On Page 3: "There can be sources of gasoline
23 vapor from a fuel tank as a result of expected deterioration
24 of the tank, its appended connections as well as from the
25 fuel line." The appended connections means -- the fuel line

1 is a filler. A fuel line is appended to the tank.

2 Q Are you now saying that when you said appended
3 connection you were not only talking about the connection
4 to the gas tank, to the cab, you were talking about all the
5 appended connections in the fuel system; is that what you
6 are saying, sir?

7 A Yes.

8 MR. ELKIND: I object to the form of the
9 question.

10 Q All right, so now, am I correct -- I want this
11 very clear -- that you now say that one of the possibilities
12 for the leakage of gas vapor was not only possible problems
13 in the cab of the vehicle but from the connections in the
14 fuel system that were not in the cab; is that your testimony?

15 MR. ELKIND: I object to that, your Honor.
16 That is a direct mis-statement of what the witness said in
17 his previous answer.

18 THE COURT: I believe that the witness is per-
19 fectly capable of correcting Mr. Hagan if there was a
20 mis-statement.

21 A I have always considered it. As I said yesterday,
22 the question is, however, whether leaks from any other part
23 of the fuel line except that part inside the cab would cause
24 sufficient vapors in the cab to create a combustible mixture.
25

And take.

Q Leaks from any other part of the cab.

A No. Leaks from --

MR. HAGAN: Read that answer back, Mr. Reporter,
just so I get it clearly.

(Answer read.)

Q Well, that assumes, doesn't it, Doctor, that
the source of the combustion was in the cab and not in the
engine? In effect you are boot-strapping, aren't you?
You are starting at the end of the argument and saying,
since it started in the cab, I assume that there must have
been vapors in the cab and therefore, if there were vapors
in the cab, it couldn't have come from the engine? Isn't
that the way you are reasoning?

A No, it is not.

Q Well, are you saying that if there had been a leak
in one of the fuel fittings or lines in the engine, under
the hood, whether in the fuel pump or the carburetor, that
if there had been such a leak and if it had been a leak of
a type whereby the gas gauge was dropping very fast,
whereby they had to stop for gas for the first time in five
years on their route, whereby the driver thought the way
the gauge was dropping that he might have a leak --

MR. ELKIND: Your Honor, I object to the form of
this question.

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MR. HAGAN: I haven't finished yet.

MR. ELKIND: It is objectionable as it stands.

THE COURT: Finish it.

Q (Continuing) Are you saying that a leak, sir, of that character in the engine could not produce fuel vapor that would come into the cab up through those holes in the floor where those floor levers go through? Is that your testimony?

THE COURT: Do you want your objection?

MR. ELKIND: Objection.

THE COURT: The objection is overruled.

A My testimony is --

Q Can you answer that yes or no, please? The reporter will read it back to you again, if you wish.

Mr. Reporter, would you please read the question back?

THE COURT: Quite frankly, Mr. Hagan, I think that that question has been answered several times before. But you may restate it. I think he has answered that question on several occasions.

MR. HAGAN: He may have, your Honor. I --

THE COURT: All right. Read it back.

(Question read.)

A The problem is very remote.

Q Now, do you remember, Doctor, yesterday discussing dispersion and convection of gas fumes?

A Diffusion.

Q Well, just let me check that for a moment.

All right, diffusion. Convection and diffusion.

Would you describe what diffusion is?

A Yes. There is a fundamental principle known as Fick's Law of Diffusion which suggests that materials can diffuse, mix within each other in confined spaces, particularly gases. Occasionally one uses liquids. Even though one may be of heavier weight than the other, it can still move against gravity because of the interaction of molecules which permits the heavier fractions to move upward more than the light fractions.

Q In layman's terms, doesn't that just mean that material, gases in the air, will tend to disperse throughout the air? Isn't that what you are saying?

A Well, there are several ways. Convection is one way, which is not diffusion. You can have a perfectly still room and you can still have diffusion. If you have in addition air currents, that will enhance and create dispersion.

Q Certainly. If you have drafts in the room, that will increase the dispersion of the fumes. I think we can

all understand that.

A Right. But there is a separation between that and diffusion. Diffusion is a more fundamental phenomenon.

Q Just for a few moments, in layman's terms, what does that mean with respect to gas vapors in an area such as a truck or an automobile when we talk about the terms "an actual convection" and "dispersion"?

A Dispersion is not a technical term. If you mean natural convection and diffusion, those are two recognized mechanisms for vapors moving through each other. Those two phenomena, those two conditions will cause the vapor to disperse.

Q Inside the cab of a truck.

A Or any place.

Q Right. So it would be on the floor, wouldn't it?

A Probably, yes.

Q Would it be up in the middle, across the middle?

A I have no way of knowing. One has to know what the --

Q I want your opinion, Doctor. You are here to give opinions.

A As I say, the diffusion and convection is an extremely difficult thing to calculate or predict. It depends on the geometry, the temperature, the pressure, the

wind, the gusts, the movement of the feet or the hands.

So I can't tell you it is going to be this high or this high. Every condition is different.

Q But you calculated that in this case, didn't you?

A No, I didn't.

Q Didn't you calculate that the fumes were around the ignition switch and in front of the faces of the drivers? Didn't you calculate that?

A No.

Q No? All right. Let's stop for a moment now.

Didn't you testify yesterday that just before this fire these people had these gas fumes right in front of their faces and the ignition of those fumes was what burned them? Isn't that what you testified yesterday, sir?

A No, I don't believe I did.

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2 Q Let me read your testimony from Page 396 of the
3 transcript. It was a long question and I will read to you
4 the first half of the page, which is the only part really
5 where you are discussing this.

6 It starts at the bottom of 395, Line 18. Mr.
7 Elkind was examining you for your conclusion that it was
8 a fire of gas vapors.

9 "Q What are your reasons, professor, for that
10 conclusion that it was a fire of gasoline vapors?

11 "A If I may, in a situation where you don't
12 have physical evidence, what you try to do is consider those
13 things which are possible, try to eliminate those which are
14 least probable in order to arrive at what you think is the
15 most probable source. Let me try to go through the reason-
16 ing process.

17 "The cab is isolated from the hood by the fire
18 wall, by the windshield, by the sheet metal. After filling
19 or partially filling the tank with gasoline, then, in close
20 proximity to the turning of the switch, which the gentleman
21 said, then the flame erupted almost completely across the
22 width of the cab, came essentially out from underneath the
23 dash board, across the entire wide in front of their faces,
24 hands.

25 "There has to be something that burned. There

1 2 jgsr Weinstein - cross 469

2 has to be something that fills that area. It can't just
3 be air. It has to be something mixed with the air that
4 will burn."

5 Now, do you remember saying that yesterday?

6 A Oh, yes, of course.

7 Q And weren't you saying there that in front of
8 their faces there had to be vapors that were ready to ignite.

9 A Not necessarily. You have to know something
10 about combustion. The flame can --

11 Q All right, sir.

12 A Well, may I explain?

13 Q All right. There is no question before you,
14 doctor. You said that.

15 A All right.

16 Q You said that that comment did not necessarily
17 mean. I asked you whether, when you said that yesterday,
18 you didn't mean there were gas vapors in front of their
19 faces, and you said, "Not necessarily."

20 A Right.

21 Q All right.

22 MR. ELKIND: I object to this type of questioning
23 in which questions were thrown and then he doesn't let the
24 witness answer.

25 THE COURT: Yes. I agree with that. You've

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2 asked him about this and you put a question to him, and
3 it seems to me you have to give him a right to explain.

4 All right. You may respond.

5 THE WITNESS: Yes. My answer is that it did
6 not necessarily have to be vapors or a very high concen-
7 tration of vapors in front of their faces. As the flame
8 moves out, it pushes ahead of it -- the hot gas or the
9 burning gas pushes ahead of it vapors that haven't yet
10 burned. The burning then proceeds. It can come from under-
11 neath. It need not be a combustible mixture in front of
12 their faces for the flame ultimately to be in front of their
13 faces.

14 Q Are you finished now, doctor?

15 A Yes.

16 Q Doctor, when you wrote your report on May 5
17 to Mr. Elkind, did you know that the fuel lines as they came
18 into the carburetor were melted after the fire but that the
19 fuel lines as they extended back towards the gas tank were
20 not? Did you know that?

21 A I knew that there was considerable melting in
22 the engine. I did not know that the gas line running along
23 the frame rail into the cab was not burned. I did not know
24 that.

25 Q When did you first learn that?

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2 A Right now.

3 MR. ELKIND: Your Honor, may I object to the
4 previous question and testimony and ask that it be stricken
5 from the record upon the ground that there is no evidence
6 in this case that I can recall as to the condition of the
7 gas line from the point that it passed into the cab of
8 the truck under the frame of the cab? I don't think there
9 has been any testimony on that at all.

10 MR. HAGAN: Your Honor, I refer to the redirect
11 of Chief Lennon by Mr. Elkind where this subject was gone
12 into by Mr. Elkind, asking him whether he had checked the
13 gas line from the carburetor and whether they were melted
14 there, and then he continued to explore on redirect, which
15 we'll verify right now --

16 THE COURT: All right. Get the page.

17 MR. HAGAN: Page 175 of the transcript. Chief
18 Lennon was on redirect by Mr. Elkind.

19 THE COURT: 175?

20 Objection overruled.

21 Q Dr. Weinstein, when you wrote your report to
22 Mr. Elkind on May 5, were you aware that Officer Neebe,
23 who was the first police officer on the scene of the accident,
24 testified that when he was about 25 or 30 feet away from
25 the gasoline station and saw the men getting out of the cab,

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that he saw a fire in the cab and under the hood?

A No, I was not aware of that.

MR. ELKIND: I object to that, your Honor, as a misquotation of Officer Neebe's testimony.

MR. HAGAN: I refer to Page 119 and Page 120 of the direct examination of Officer Neebe, specifically to the top of Page 120.

THE COURT: All right.

MR. ELKIND: Your Honor, there are two points in Officer Neebe's testimony. One is Line 24 on Page 117, in which there is a reference to smoke and flame coming from the cab.

THE COURT: All right.

MR. ELKIND: And then, later on, on Page 120, he speaks of thick black smoke coming from the vicinity of the cab and partially under the hood, flames at the base of the smoke from the cab.

THE COURT: What was the question?

MR. HAGAN: Your Honor, I'll be glad to read Officer Neebe's question and answer to the jury and then they can decide.

MR. ELKIND: Why don't you do that?

MR. HAGAN: Page 119 and Page 120. This was
Officer Neebe on direct examination:

"Q Can you describe in more particularity the
flames that you observed?

"A Yes. Primarily black, thick black smoke
coming from the vicinity of the cab and partially under the
hood, flames at the base of the smoke from the cab."

In any event, he said he was not aware of
Officer Neebe's testimony, however you interpret it.

THE WITNESS: May I --

Q There is no question before you.

A Excuse me. All right.

Q Doctor, when you first see --

MR. ELKIND: If your Honor please, was that in
connection with a question?

THE COURT: He says there was no question before
him. He said he was not aware of it and that we are going
on to something else.

MR. ELKIND: I object.

THE COURT: The only question before the doctor
was whether he was aware. He said he was not.

All right.

Q When did you first see Defendant's Exhibit B, which

2 is the photograph of the engine after the fire?

3 A Yesterday.

4 Q Now, yesterday, when we were closing, you were
5 marking on this Exhibit I, which shows a mock-up of the
6 ignition system, the various sources of spark during the
7 ignition process. Do you remember that?

8 A Yes.

9 Q And you determined that during the normal ignition
10 process there are possibly some 18 sparks in the engine
11 area and one in the cab, isn't that right?

12 A Yes.

13 Q So that, Doctor, in determining the probabilities
14 of source of ignition in this case, if we were just thinking
15 about sparks the odds would be about 18 to 1 in favor of
16 the engine, wouldn't they?

17 A For ignition source, yes.

18 Q Do you remember in your report to Mr. Elkind
19 staging in substance that the arrangement of the tank and
20 filler assembly in the cab was the most probable source of
21 gasoline vapors at the time of the fire?

22 A Yes.

23 Q And are you saying, sir, now, that when you made
24 that statement in your report you were aware of the possi-
25 bility of a leak in the fuel system?

1
2 A Yes.

3 Q And you didn't believe that the possibility of
4 such a leak was important enough to describe further in
5 your report?

6 A I considered it less probable than the gasoline
7 tank presence in the cab.

8 Q By the way, am I correct that when you were
9 reporting to Mr. Elkind you gave a variety of possible
10 sources of the vapor and you described the gas tank might
11 have rusted and corroded and you described the fuel, the
12 filler neck could have come loose and fumes could have
13 gotten out of there, isn't that right?

14 A Yes.

15 Q You, of course, never saw the filler neck in the
16 accident vehicle, isn't that right?

17 A That's correct.

18 Q And the only filler neck you saw was the one that
19 was taken out of truck No. 1 in May of '75, nine years after
20 it was put in there, isn't that right?

21 A That's correct.

22 Q Now let me show this filler neck, Doctor, and
23 let me ask you whether your perusal of that filler neck
24 indicates a deterioration of the kind that you were talking
25 about to Mr. Elkind.

2 A No, it does not.

3 MR. HAGAN: Your Honor, I would ask permission
 4 to pass to the jury this filler neck. I know they have
 5 seen it a couple of times. But just for the point of look-
 6 ing at the rubber and the top part of the filler neck.

7 Considering the age of this part and considering
 8 it was taken out of the sister vehicle, I think it is
 9 relevant in determining the probative value of Dr. Weinstein's
 10 possibility.

11 MR. ELKIND: If your Honor please, I don't mind
 12 the jury receiving that and looking at it again, but I do
 13 object to the speech and the argument.

14 THE COURT: All right.

15 MR. HAGAN: By the way, your Honor, we have
 16 supplemental requests. Do you want them now?

17 THE COURT: Yes.

18 MR. HAGAN: Very well (handing).

19 (Pause.)

20 Q Now, isn't it true, Doctor, that you advised
 21 Mr. Elkind that it was not now possible to establish a
 22 precise source of the vapors that ignited in the truck?

23 A Not now possible to determine the precise source
 24 of all those associated with the gasoline tank in the cab.

25 Q That is not what I asked you.

1 A The precise source of those associated with the
2 gasoline tank being in the cab.

3 Q Based on your analysis of the situation, Doctor,
4 I gather you came to the opinion that there were vapors
5 around the ignition switch, isn't that right?
6

7 A It is highly probable that there was a combustible
8 mixture in the vicinity of the ignition switch, yes.

9 Q Would you say you are certain of that?

10 A I'm not a hundred percent certain.

11 MR. ELKIND: If your Honor please, he said it
12 was highly probable.

13 THE COURT: All right. He hasn't changed his
14 testimony.

15 MR. HAGAN: I didn't get the answer. I'm
16 sorry.

17 THE WITNESS: It is highly probable.

18 Q Now, as I'm sitting in the cab of the engine,
19 whether I'm the driver or the middle passenger, would you
20 say that that ignition switch is at my arm's length as I
21 turn the key?

22 A I don't know precisely whether you would be at
23 arm's length. It is a reach. It depends on where you
24 are sitting.

25 Q Well, did you examine truck No. 1?

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A Yes.

Q You were there.

A Yes.

Q You saw truck No. 1 and you saw where the key was.

A Yes.

Q All I'm asking you is, would you agree that that's at arm's length?

A Approximately. You said would I, and I don't know how you would sit in the cab.

Q I don't think our arms are that much different, Doctor.

MR. ELKIND: I object to this line of questioning, your Honor. There are so many variables on where you sit on the seat as to whether you are at arm's length or not.

THE COURT: But the point is, the cab is not that big and the testimony is the driver or the one in the middle, it seems to me, had to sit at a certain place.

The objection is overruled.

Q Doctor, you believe there were vapors around the ignition switch, and if you'll agree with me for a moment the ignition switch is approximately at our arms' length when we areach over to turn the key. Are you then saying that the vapors that ignited were in the vicinity of the end of a man's arm?

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Q I see. They weren't in front; they were underneath.

A Yes. You would have to have a combustible mixture in the vicinity of the ignition part of the switch, probably underneath, in the back side.

Q How can you be certain there weren't any in front of the switch?

A I'm not saying there weren't any. I'm not saying there weren't. I am saying you would need some in the back.

Q What's your opinion, Doctor? Were there any in the front?

A There might have been. I don't know.

(Continued on next page)

2 Q Doctor, you have been testifying here on poss-
3 sibilities and probabilities. We know you are not certain
4 and nothing I asked you is going to be for a certainty,
5 but what is going to be the best estimate you have as to
6 whether there were gas vapors around that ignition switch
7 in the front?

8 A I imagine there was reasonable probability that
9 there were vapors in the front.

10 Q Assuming that that is so, doctor, and considering
11 your knowledge in the area of diffusion and convection of
12 fumes and vapors, and considering your knowledge that the
13 driver had gotten out of the cab, opened the left door, then
14 the left door was closed, what is your opinion as to whether
15 those vapors that you said there was a reasonable probability
16 were in front of that switch at the end of that man's arm
17 were also dispersed in the air toward his face?

18 A As I have indicated earlier, yes, there is a
19 probability. Whether it was a combustible mixture or what
20 concentration, I don't know, but there is a probability
21 they were there.

22 Q They would have been dispersed toward his face?

23 A Yes.

24 Q Assuming that, what in your opinion is the
25 probability that if those fumes were in front of a man's

face that he would smell them or not?

A There is a high probability that he would smell them. Whether he would be aware of them is, I think, another question.

Q When you wrote the report to Mr. Elkind on May 5 were you aware that all three of the men in the cab had testified that they did not smell gas fumes just before the fire started?

A Yes.

Q Did you mention that in your report?

A No, I did not.

Q By the way, doctor, in making your investigation of this truck you knew that it had been in service for five years as a garbage truck for the Town of Weehawken; is that correct?

A Yes.

Q What did you know of the history of the maintenance of this truck?

A I had copies of some of the maintenance records from the High Point Garage, and it appeared to be typical maintenance for the truck.

Q What years did they cover?

A I don't recall.

Q I will let you check your records a moment if

1
2 you need to. As you sit here today, when you were reviewing
3 this matter you said you had some records. What was your
4 understanding as to the years those records covered ?

5 A I think they were for a year or so in advance
6 of the incident on August 14.

7 Q How about the three or four years before that;
8 did you have any records or any knowledge of the maintenance
9 history of this vehicle?

10 A No, I had not.

11 Q In arriving at your conclusion did you review
12 the Interrogatories and the Answers to the Interrogatories
13 which General Motors had served on plaintiff and the
14 Answers which plaintiff had served on General Motors?

15 A I believe so. I think there were two sets,
16 if I recall.

17 Q Did you read in the Answers to the Interroga-
18 tories --

19 MR. ELKIND: Please tell me which one you are
20 reading from and the date.

21 MR. HAGAN: No. 34, and your response of April
22 18, 1973.

23 MR. ELKIND: May we approach the side bar, please,
24 before this question is asked?

25 MR. HAGAN: All we are talking about now is the

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2 answer to the Interrogatory.

3 MR. ELKIND: I am going to object to the
4 Interrogatory being read to the jury because there were
5 supplemental answers.

6 MR. HAGAN: That can be brought out on redirect.

7 MR. ELKIND: I don't think it is proper.

8 THE COURT: As I recall -- I was trying to
9 reconstruct it, but as I recall Professor Weinstein indicated
10 that what he had done, one of the things he indicated, as
11 I remember, was mention the Interrogatories of the defendant.
12 As I recall, you mean that; is that right?

13 THE WITNESS: Yes.

14 THE COURT: That was one of the sources of your
15 knowledge.

16 I don't think there is any need for a side bar.

17 MR. ELKIND: If your Honor please, I believe
18 that a reading of it will be highly prejudicial.

19 THE COURT: Let me look at it.

20 What is the answer?

21 MR. ELKIND: The Answer to Interrogatory 34 was
22 given in 1973, before discovery was complete.

23 THE COURT: What number is it?

24 MR. HAGAN: 34.

25 [Pause.]

1 THE COURT: All right, you may go ahead. The
2 objection is overruled.

3 Q Dr. Weinstein, in reviewing the Interrogatories
4 or questions of General Motors which were thereafter answered
5 under oath by the plaintiff, did you review Interrogatory
6 No. 34, sir?

7 A Yes.

8 Q The answer?

9 A Yes.

10 MR. HAGAN: Your Honor, at this time I would
11 like to read into the record the sworn answer to Inter-
12 rogatory No. 34 which was answered by the plaintiff on
13 April 18, 1973.

14 THE COURT: Yes.

15 MR. ELKIND: My objection is on the record.

16 THE COURT: You have already objected.

17 Q Interrogatory No. 34 is this question by General
18 Motors:

19 "Q If constructive notice of any such defective
20 or unsafe condition is claimed, state the nature of the
21 condition and the length of time the condition existed."

22 "A THE PLAINTIFF: The hazardous design of the
23 engine and the gasoline feed arrangements and the position
24 of the gas tank in the cab; the upright sparkplugs created
25

1 receptacles for gasoline from the gas line; the fire wall
2 between engine and cab was not designed to effectively
3 limit fire spread from engine to cab; the gasoline tank
4 and air vent pipes were in the cab -- all created hazards
5 by the defendant in the original design of the truck.

6 The replacement parts that were installed may also have
7 been General Motors parts manufactured in such a way as to
8 create an unreasonable hazard of igniting gasoline fumes."

9
10 When you were preparing your report and review-
11 ing all these materials, were you aware that plaintiff's
12 earlier claim here had been that the source of ignition had
13 been the sparkplugs and the problem was the fire wall had
14 been unable to keep the fire going from the engine into the
15 cab; were you aware of that, doctor?

16 A Yes.

17 Q Now, doctor, yesterday you told us that in
18 preparing for this testimony and report you did for Mr.
19 Elkind you did some work and you read some articles and
20 one of the articles you read was an article called -- I
21 am referring to Page 367 of the transcript -- "flammability
22 characteristics of combustible gases and vapors" by Mr.
23 Sabetakis.

24 A Yes.

25 Q What combustible gas and vapor do you think you

1
2 were dealing with in this case?

3 A Something resembling an N-octane. That is --

4 Q Is that what we call gasoline?

5 A Yes, it is a designation.

6 Q It would be easier if you referred to it as
7 gasoline, because that is what everybody has been calling it.

8 A All right.
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1 Q You knew you were giving in this case with a
2 possible ignition of gas vapors; isn't that right?
3

4 A Yes.

5 Q And in your mind you had excluded any other gases
6 and vapors, hadn't you?

7 A No, I had not.

8 Q List all the other gases and vapors that you had
9 not excluded.

10 A Vapors from oil is one which can be in the
11 reasonable proximity of the cab.

12 Q Right. Do you have any evidence of oil leaks in
13 this truck?

14 A No, but the volatility of the oil is so low that
15 the vapors emitted could not reasonably cause a fire in the
16 cab.

17 Q So isn't it a fact, Doctor, that you never really
18 seriously considered emission of oil vapors to explain this
19 fire; isn't that right?

20 A I just said that I did.

21 Q That you what?

22 A I just said that I did consider it and rejected it
23 as a minimal possibility.

24 Q Did you have to do a lot of research to reject the
25 possibility that oil vapors was the source of the fire, or

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did you just consider it and immediately reject it based on your knowledge?

A Partly through reading and partly through my own knowledge.

Q Now, what other sources of vapors did you think might have been a possibility here besides gasoline vapors and oil vapors?

A Oh, there is a possibility, of course, that batteries give off hydrogen, which is extremely flammable, but, again, its possibility of getting into the cab is extremely remote.

Q How long did it take you in the analysis of the possibilities of a hydrogen leak from the battery to reject that?

A I can't give you the exact time.

Q How many articles did you have to read in your research to reject that?

MR. ELKIND: I object to that.

THE COURT: Objection sustained.

Q Were you able to reject it without doing research or did you have to do research in order to reject the possibility that it was a hydrogen leak from the battery?

A No, I did not do excessive research to reject hydrogen as a possible source of combustibility.

Q Did you have to do any research into written material in order to reject the notion that the possible cause of this fire was a hydrogen leak from the battery?

A No.

Q What other sources were you considering when you were investigating this? We have now got gas vapors, oil vapors, we have got a possible hydrogen leak from the battery. What other possible sources did you consider?

A The possibility of a combustible mixture of dust in the cab.

Q Dust in the cab?

A Yes.

Q You would have to have a tremendous amount of dust, wouldn't you, Doctor?

A That is right, but I considered it.

THE COURT: He testified to that yesterday.

Q Was there any evidence by any of the men whose deposition you read that the cab was filled with dust?

THE COURT: He testified to that yesterday.

Q What I am trying to figure out is why you were considering the possibility of dust in the cab. What evidence did you see of dust in the cab?

A None, but I --

Q What other --

1 A Let me explain my rationale, how I go about trying
2 to draw a conclusion. I try to consider all possibilities
3 that might in fact be reasonable to consider and try to
4 eliminate them or raise them to the level of reasonable
5 probability or reject them.
6

7 Q Are you saying that you considered in this case,
8 based on the facts that you became aware of in reviewing the
9 materials, that it was reasonable to consider the possibility
10 that the fire had been caused by dust?

11 A I considered it as a possibility and rejected it.

12 Q But you thought it was reasonable to consider it?

13 A It is a possible source of a combustible matter.

14 Q What other fumes and vapors were you considering
15 as a source of the fire?

16 A Well, if there had been a leak in the tank inside
17 the cab, rags --

18 Q Other than gas fumes?

19 A I mean as a source of vapor.

20 Q Now, you have listed gas fumes, oil vapor,
21 possible hydroge leak from the battery. You have listed
22 dust from the air. What other sources did you consider?

23 A I think that is about all I considered.

24 Q Do you believe that based on your knowledge, your
25 prior knowledge in this field and considering the evidence

1 you had before you, the way the men described the fire, the
2 reports of the fire chiefs and the police officers and all
3 the materials you had available to you, did you believe at
4 that point in time before you started reading these articles
5 that you could say: Based on my knowledge it could only
6 have been gas vapor?
7

8 A That is not precisely my reasoning process. It
9 doesn't work that way.

10 Q Are you saying that when you started reviewing
11 written materials you still had a number of possibilities in
12 your mind besides the gas vapors?

13 A What I wanted to establish was --

14 MR. HAGAN: If your Honor please, I think that my
15 question is not that difficult. I would ask that I get an
16 answer out of this witness.

17 THE COURT: The problem I have with it, Mr. Hagan,
18 is that I think he has explained what he did. He explained
19 that yesterday. It seems to me you are regurgitating to a
20 point. He has told you what he did and how he went about
21 it yesterday.

22 MR. HAGAN: What I am trying to establish, which
23 I do think is relevant --

24 MR. ELKIND: If your Honor please, what he wants
25 to establish is not a proper statement.

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2 THE COURT: All right. Read the question.

3 (Question read.)

4 THE COURT: I am going to sustain that objection.

5 Q Doctor, did there come a time in your analysis
6 when you commenced reading the three articles you described
7 yesterday, and I won't reread them. I am referring to all
8 three, if you remember them, that I described at Page 367
9 in the transcript.

10 A Do I recall the time I first --

11 Q Do you recall starting to read these three
12 articles which you mentioned yesterday?

13 A Yes.

14 Q At the time you commenced reading these articles
15 did you still have in mind the possibility that this fire
16 could have been caused by something other than gas vapor in
17 the air?

18 A Gasoline vapor? Is that the question?

19 Q Yes, other than the gasoline vapor.

20 A I can't really be certain at what point I completely
21 rejected or considered it as a low probability, the other
22 possible sources. I don't recall.

23 Q This article by Mr. Zabetakis put out by the
24 Bureau of Mines, entitled "Flammability Characteristics of
25 Combustible Gases and Vapors," Doctor, that sounds like

1 rather elementary article for a person with your background
2 to be reading.
3

4 MR. ELKIND: I object to that.

5 THE COURT: The objection is sustained.

6 Q Am I correct, then, Doctor, it was only after
7 reading those articles -- you mentioned it was after that
8 that you finally settled on gasoline vapor?

9 MR. ELKIND: Objection, your Honor.

10 THE COURT: The objection is sustained.

11 Q Do you recall at what point in time -- you said
12 you were retained, I believe. Maybe you didn't say you
13 were retained. You said you were first contacted in
14 September of last year?

15 A Yes.

16 Q You ended your report on May 5; is that right?

17 A Yes.

18 (Continued on Page 494)
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Q And you came up and visited Truck No. 1 on May 3, is that right, two days before?

A That is correct.

Q On May 3, when you were up here examining the truck, did Mr. Elkind tell you that there was a trial date of May 19 and you had to get that report in pronto?

A Yes.

Q Prior to May 3 had you completed your analysis and did you know to your best opinion what the cause of this fire was?

A Not prior to May 3rd. I wanted to see the sister truck to conclude.

Q When you came up here on May 3 to look at the sister truck, after having first been contacted back in September, are you saying that at that point you still had not made a final determination as to the cause of the fire in this case?

A What point are you asking, whether I had made a final determination in September?

MR. HAGAN: Repeat the question.

[Question read.]

Q On May 3, when you came up to look at the truck.

A That is right.

Q Am I correct that between May 3 and the date of

1 this report, May 5, that you put it all together and came
2 out with your opinion; is that correct?

3
4 A Yes.

5 Q When was it that this four-page report to Mr.
6 Elkind was typed? Was it typed on May 5 or was it typed
7 on the 4th?

8 A The 4th was Sunday. It was typed on Monday.

9 Q How do you prepare your reports? Do you write
10 them out in longhand or do you dictate to a secretary,
11 or how do you do it?

12 A Longhand, I write them out longhand.

13 Q You wrote this out when, on Monday?

14 A In the office Saturday night and Sunday.

15 Q Did your conclusions change from Saturday night
16 to Sunday or did you have everything in mind when you started
17 writing the report on Saturday night?

18 A You are asking me how I think and I really can't
19 be precise. On the plane coming back I reviewed my notes
20 and --

21 THE COURT: Mr. Hagan, I don't really think
22 this is helping us at all. I think you ought to move on to
23 something else.

24 MR. HAGAN: Your Honor, I do think it is proper
25 examination because I believe it goes to how much weight the

1 jury can give to the opinion.

2
3 THE COURT: Yes, but the point is that whatever
4 opinion he had is on the report of the 5th of May. It seems
5 to me that he has explained what his process was and I think
6 that is sufficient.

7 Q Doctor, yesterday do you remember I was asking
8 you some questions as to whether you considered yourself an
9 expert on gasoline and we got into a bit of an argument about
10 it and the final answer you gave was that you did believe
11 that you were knowledgeable enough to comment about limits
12 of probability and ease of ignition; do you remember that?

13 A Yes.

14 Q Now, do you remember later on I asked you in
15 connection with Defendant's Exhibit H for identification,
16 assuming that this was gasoline -- I asked you to assume
17 that with me -- whether you could tell me if I held a match
18 above the fumes at any level, six inches, a foot, two feet,
19 three feet, you could tell me where in that line the fumes
20 would ignite. Do you remember me asking you that?

21 A Yes.

22 Q And you declined to do so, didn't you?

23 A I said I could not.

24 Q And in light of that do you still claim that
25 you are knowledgeable to comment about the ease of ignition

and the limits of flammability of gasoline?

A Yes.

MR. ELKIND: I object to the form of the question, your Honor.

THE COURT: It has been answered.

MR. ELKIND: I move that it be stricken.

THE COURT: It has been answered. There is nothing before us.

MR. ELKIND: There is no evidence here about a fire involving gasoline. It is gasoline vapors.

MR. HAGAN: May I hear that statement?

MR. ELKIND: I said there is no evidence here about a fire involving gasoline, it is gasoline vapors.

MR. HAGAN: That is what the whole case is about.

THE COURT: The objection is overruled anyway. Let's proceed.

Q Doctor, in arriving at your conclusion that the fire started in the cab rather than the engine, was one of the factors you considered your view that it couldn't have started in the engine because then the fire wall would have prevented the flame from whooshing into the cab like that?

A No, I did not. I recall the question. I tried to make it more precise. I don't know which fire started first. I'm reasonably certain there were two fires, one

1 in the engine compartment, one in the cab, as I testified
2 to yesterday.

3
4 Now, I'm not certain whether the fire in the
5 engine compartment might have caused some particles, hot
6 particles to come into the cab and ignite the flammable
7 vapors in the cab, or it was the reverse, whether the fire
8 started in the cab, sent some vapors through the tiny holes
9 and started a fire in the engine. I'm not certain which
10 one it was.

11 MR. HAGAN: I have no further questions.

12 REDIRECT EXAMINATION

13 BY MR. ELKIND:

14 Q Professor, with respect to the last subject
15 that Mr. Hagan was asking you about, that is the fact that
16 there was a fire under the hood and there was also a fire
17 in the cab -- is that correct?

18 A Yes.

19 Q And the question which came first, your report
20 makes no reference to which came first, does it?

21 A No.

22 Q Am I correct that you did not have at the time
23 that you rendered your report, you did not have available
24 to you the testimony of Lieutenant Neebe and the testimony
25 of Officer Diana?

1
2 MR. HAGAN: Objection, your Honor. I am going
3 to ask that this line of questioning not be leading; that
4 the witness not be asked this type of leading question.

5 THE COURT: I agree with you. You can object
6 as to the leading questions, but all he is doing at the
7 present time, as far as I can see, is merely stating what
8 is already in evidence and what you brought out.

9 All right.

10 Q I would like to ask you your opinion with respect
11 to which fire there was first, the fire in the cab or the
12 fire under the hood in light of the following testimony
13 which was given in this courtroom on May 19, 1975.

14 MR. HAGAN: May I have the question?

15 THE COURT: I would like to ask you which
16 fire was first, the fire in the engine or the fire in the
17 cab; is that it?

18 MR. ELKIND: The fire in the engine or the fire
19 in the cab.

20 THE COURT: Based on testimony.

21 MR. HAGAN: As far as the plaintiff's case is
22 concerned, he has already gone into that with Mr. Weinstein
23 on direct examination. He has had ample opportunity. He
24 is going back into the very same thing.

25 THE COURT: I think that is so. I think that

Professor Weinstein has already indicated what his opinion is in regard to this. He has given it to us. I don't think that you can now, at this stage of the game on so-called redirect, go over that ground. He has given his opinion both on direct and on cross-examination.

MR. ELKIND: If your Honor please, I think it is proper redirect because counsel referred to the testimony of Lieutenant Neebe on cross and he asked him with reference

THE COURT: I know Professor Weinstein is here. He has made an examination and he has given us his opinion and told us the sources and his reasons. What you are apparently asking him to do is read some testimony and apparently change it.

MR. ELKIND: No, I don't want to change it. I want to give him some additional factors that came out during the trial and ask him what his opinion is with respect to the earlier testimony in light of the evidence that came in at the trial.

MR. HAGAN: I object because that is the function of direct testimony.

THE COURT: I would think so. I think that would be so and I would think that you were under an obligation if you were going to use that testimony to ask if that was going to affect his testimony on direct.

MR. ELKIND: Lieutenant Neebe's testimony was or part of it was quoted to the witness on cross-examination.

MR. HAGAN: I assume that that means that they did not consider it important enough to go into it on direct or they would have gone into it on direct. The fact that I went into it on cross does not mean that we do the whole thing again.

MR. ELKIND: I did refer to Lieutenant Neebe's testimony as part of my hypothetical question. That was part of my direct case.

THE COURT: Let me find out what it is you intend to bring out.

[At the side bar:]

MR. ELKIND: If your Honor will recall, Lieutenant Neebe was the police officer who was an eye-witness to the men jumping out of the cab and I did ask the witness in my hypothetical question to assume that an eye-witness had seen the men jumping out of the cab and at the time there was smoke and flames coming from the cab, and I also spoke about the black smoke, I think, coming from the vicinity of the cab and partially under the hood, and it he took that into account.

Then counsel on cross-examination asked Professor Weinstein questions with respect to Lieutenant Neebe's

1 testimony and asked whether that did not indicate that there
2 was a fire in the motor under the hood and in the cab at
3 that time, and I claim the right to read this earlier
4 portion of the testimony at the time he saw the men jumping
5 out and that there were flames coming from the cab, and
6 then I would also read the testimony, a section of the
7 testimony of the second police officer who came on whose
8 name was Diana and Diana came after Lieutenant Neebe, and
9 he said that when he arrived there it looked like the whole
10 front end was burning.
11

12 I say that the professor may very well reach
13 the conclusion on the basis of that testimony that the fire
14 was originally in the cab and that it spread from the cab
15 to the engine area. These are disinterested eyewitnesses.

16 MR. HAGAN: The testimony he wants to read
17 from Officer Neebe, he has just advised your Honor that he
18 used it in his hypothetical on direct.

19 MR. ELKIND: I did.

20 MR. HAGAN: On cross-examination I also went
21 into that. That doesn't open the door to rehash the same
22 ground again. What he is now doing --

23 MR. ELKIND: I don't want to rehash the tes-
24 timony. I want to bring in this other factor that the
25 whole front end was burning. That is the testimony from the

2 second police officer on the scene.

3 MR. HAGAN: You want to go into that without
4 going into Neebe?

5 MR. ELKIND: I will cover them both.

6 MR. HAGAN: You have already done that.

7 THE COURT: What you are planning to read is
8 what Mr. Hagan read plus the fact that you want to read what
9 this other man testified. It seems to me that you can ask
10 the question, but not in the form that you are asking it
11 or indicating that you want to ask it. That question gives
12 me the impression that you are asking this man to change
13 his mind or asking him to reform his opinion, that is, the
14 question about the flame all over or was he aware of that
15 testimony. I suppose you can ask him that question if you
16 reframe your question.

17 MR. ELKIND: What about starting with Neebe ?

18 MR. HAGAN: I object to that.

19 THE COURT: He has not moved beyond what you
20 did with the other man. As a matter of fact, he reframed
21 his question to read precisely in the man's language, so
22 he has not gone any further than you went.

23 MR. ELKIND: If your Honor please, I want to
24 get this straight in my own mind. I don't want to go into
25 Diana's testimony unless you are going to give me the

privilege of referring to the Neebe testimony.

THE COURT: You can go into Diana's testimony because of the fact that it seems to me he has opened the door in that regard and you can bring up his testimony if you want to with a proper question, but he hasn't moved beyond what you explored with the other witness.

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[In open court:]

BY MR. ELKIND:

Q Professor, you stated in cross-examination that you took into account, in reaching your opinion, the possibility that there may have been a leak in a fuel line in someplace other than in the cab but that you discounted it as not being a reasonable probability. Do you recall that?

A Yes.

Q Now, would you explain the reasons that caused you to discount a fuel line leak anyplace other than in the cab as a reasonable probability of the source of the gasoline vapors?

THE COURT: Frankly, I think that Professor Weinstein has explained that lucidly and fully. He did that, I think, when you first asked him the question. I don't think that there is anything that has to be explained about that. I think the professor has been very lucid about why he felt that the source had to have been inside the cab and he discounted the others.

Q Mr. Hagan in questioning you suggested that the rationale for having a gas tank in the cab of the truck was developed during World War II. Do you remember that testimony?

MR. HAGAN: Objection, your Honor.

Q Do you remember that question?

MR. HAGAN: No, no. I object to the phraseology of that question, your Honor. The record will not support it. If necessary, I would like to approach the side bar and we can go over the question. That is not the question.

MR. ELKIND: I'll take the question right from the page.

THE COURT: Where is the page?

MR. ELKIND: Page 410.

Q The question to you was:

"Q Are you familiar at all with the experience gained in World War II with respect to the placement of fuel tanks in trucks?

"A No, I am not."

Do you recall being asked that question?

MR. HAGAN: That is a different question than what you now said I asked.

THE COURT: All right. Now it is accurate.

Q What would be the consideration in war time for placing a fuel tank in the cab of a truck?

MR. HAGAN: Objection, your Honor.

THE COURT: That objection I think I am going to have to sustain. I don't believe that Professor Weinstein

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is an expert on the development of vehicles, particularly for war usage.

Q When did World War II end?

A Are you asking me?

Q Yes. What year?

A '45.

Q And what year was this truck manufactured?

A 1966.

Q Professor, were you aware during the cross-examination by Mr. Hagan that a second police officer coming to the scene after Lieutenant Neebe had observed the entire front end of the truck in flames?

A Was I aware of it yesterday?

Q Until I mentioned it just now, have you been aware of it?

A I don't believe so.

Q Do you recall the testimony of Lieutenant Neebe? I quoted that to you and counsel quoted it to you.

A Yes.

Q Would the consideration of the testimony of those two eyewitnesses, Lieutenant Neebe testifying to what he saw when he arrived at the scene, when the men were jumping out, and Officer Diana testifying to the entire front end of the truck being on fire -- would that be of any assistance

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to you in formulating as to whether or not the fire started
in the cab first or under the hood first?

A Of some assistance. Do you want me to explain?

Q Would you explain that?

A I think one has to be quite careful because
there are two different conditions. Of course, one can
see through the glass of the windshield or the open windows.
So that, if there is a fire there, it is more ^{readily} ~~rarely~~ visible.

The fire under the hood, however, is contained
by the hood being down, and it is very difficult, with that
kind of evidence, to decide which came first.

MR. ELKIND: Thank you, professor.

MR. HAGAN: No questions, your Honor.

THE COURT: All right. You are excused.

[Witness excused.]

THE COURT: Call your next witness.

MR. ELKIND: Dr. Tobias.

